

United States  
Circuit Court of Appeals  
for the Ninth Circuit.

Transcript of Record.

(IN THREE VOLUMES.)

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ALASKA JUNEAU GOLD MINING COMPANY, a Corporation,

Plaintiff in Error,

vs.

ISADORE GOLDSTEIN,

Defendant in Error.

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VOLUME III.

(Pages 769 to 1083, Inclusive.)

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Upon Writ of Error to the United States District Court of the District of Alaska, Division No. 1.

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(Testimony of B. D. Stewart.)

Q. Determine very accurately where the slide would happen?

A. That is assuming certain conditions—

Q. Yes, that is assuming certain conditions to exist?

A. He had to assume certain conditions which in the case of a concrete example would probably be unknown, but he made his theoretical curve and then by subsequent observation he verified on the ground the fact that in the mass there at the Canal rupture did occur along such curve.

Q. He verified on the ground by actual observation that his theoretical calculation was correct?

A. Yes, sir.

Q. If you had before you, Mr. Stewart, the exact data of the character of the soil lying upon the hillside, such as Mount Roberts, or any other place, and had before you the height of the cut made in the soil, its slope and its elevation, and had before you also the slope of the hill, the character of the bedrock and its slope, and the exact conditions in the soil mass with reference to roots, and all those matters, so that your knowledge would be exact upon those subjects, then could you sit down and by the application of Dr. Becker's formula determine exactly where the slide would happen?

A. If you knew all of the necessary elements, yes.

Q. With the same accuracy that an eclipse or any other matter of that kind can be foretold?

A. You could, yes.

Q. It would only be a matter of knowing the ex-

(Testimony of B. D. Stewart.)

act data with reference to the character of the soil lying above the cut? [642]

A. It would, yes—exact and complete.

Q. Exact and complete, yes. Of course in practical work your observations would not be as exact as those of the astronomer because of the fact that you cannot tell where there might be a root in the ground, or where there might be a big rock in the ground, that might retard the action of the mass, is that true? A. That is true.

Q. In other words, if you had all the elements of what the frictional resistance would be you could determine it exactly. A. You could.

Q. Now, this drawing, does that show the elastic curve as exemplified by Dr. Becker?

A. It is an approach to it. It is the same type of a curve—I would say local conditions would cause variations which probably appear there, but in a general way it resembles the type of the curve.

Q. Mr. Stewart, where a cut is made in the ground and the support taken away from the mass lying above it, what happens—what is the first thing that happens?

A. Strains are set up in the mass lying above the cut.

Q. I wish you would describe that to the jury so that they will understand just what you mean by that statement.

A. As I explained before, in its natural condition, as it lies upon the hillside, that mass of soil is in the state of rest—that is there are no forces

'(Testimony of B. D. Stewart.)

acting upon it which would tend to cause it to move.

Q. And that would be so independent of the moisture contained in the soil—that is, provided it does not get so moist that it runs off like water?

A. Not unless it gets to the state where it would flow.

Q. But until it would flow,—while it is in a solid mass, it lies at rest? [643]

A. Yes; I should say that the angle from the horizontal at which it lies would represent a state of rest under the most unfavorable natural conditions for it to lie that way.

Q. The slide was deposited in rainy weather, in other words?

A. It has been subjected to rainy weather, of course, for an unknown number of years.

Q. And on account of that it has been made as heavy as it could be made? A. I think so.

Q. Proceed, now, Mr. Stewart, excuse me for interrupting you.

A. The making of a cut at a point on that hill-side would rob the mass lying above it of a part of its natural support which held it at rest and the removal of that support would set up strains within the mass.

Q. What strains are those—where do they originate from?

A. From the weight of the mass itself.

Q. From the weight of the mass itself and the laws of gravitation?

A. And the laws of gravitation, of course.

(Testimony of B. D. Stewart.)

Q. How would those laws affect the mass from then on—from the time the cut was made?

A. Tend to cause it to move.

Q. The pull on the mass from then on is constant? A. It is.

Q. There is a steady, constant pull down hill?

A. A tendency for it to move down hill and refill the excavation that was made.

Q. How does that continue to act?

A. The strains, if allowed to operate for a sufficient length of time, will finally result in a rupture.

Q. What do you mean by a rupture?

A. Well, a breaking loose along a certain definite surface.

Q. Along a definite surface, and that surface is where with reference to where the elastic curve was?

A. If it was a perfectly homogenous mass it would be along the [644] line of the elastic curve.

Q. Then what happens,—does the mass move slowly or suddenly—how does it move after that?

A. The mass would probably move imperceptibly at first—small breaks would occur, but as soon as complete rupture along the surface upon which it is going to slide takes place it would probably be rapid from then on.

Q. At first it would be very slow, so that you couldn't see it? A. It would, yes.

Q. What evidences would appear at the toe of the slide mass after the motion had become percep-

(Testimony of B. D. Stewart.)

tible and after the mass had really begun to move in a perceptible way?

A. According to Dr. Becker observations at the Canal showed the first effect was a bulging at the toe—what might be called the foot of the elastic curve.

Q. How would that become evident at the toe?

A. By a bulging of the soil at the toe.

Q. Loosening up of some muck and rocks?

A. I should think so.

Q. Would that bulging be apparent to the naked eye except from the fact that muck and rocks were bulging out there?

A. Probably not,—not at first.

Q. At the same time that this bulging and rupture would occur below, what would happen above?

A. I should think cracks would appear at the surface.

Q. This bulging at the toe might have been occurring for a considerable length of time before it became evident? A. Yes.

Q. Then, after the crack was first formed, how would the mass act?

A. As soon as rupture took place it would probably begin to slide.

Q. What, if anything, in the way of water would become evident at the toe of the slide mass after the rupture had occurred?

A. As a result of the content of water in the mass above it?

Q. Yes. [645]

(Testimony of B. D. Stewart.)

A. I should think water might appear at the foot of the surface upon which the sliding was occurring.

Q. The water would squeeze out of the mass?

A. I would think so, yes.

Q. And the volume of water that would come out at one time would depend upon the squeeze at that particular time—the extent of the squeeze?

A. More or less, yes.

Mr. HELLENTHAL.—I think you may cross-examine.

Cross-examination.

(By Mr. RODEN.)

Q. Now, the water would squeeze out, Mr. Stewart, but the dirt, the bulge, that would not fall down, would it—that would not cave in?

A. You mean after movement had started?

Q. Yes.

A. Yes, the dirt would naturally fall over the toe.

Q. Sure—that would be the first place where the dirt would begin to cave, wouldn't it?

A. I should think so, yes.

Q. Sure—and a man doesn't have to be a scientifically trained man to know that, does he?

A. No, I wouldn't think so.

Q. You can see that anywhere on the sidehill where you make a cut or anything else?

A. That is the first place it falls off.

Q. I understand you to say, Mr. Stewart, that Dr. Becker's theory—and it is only a theory, after all, isn't it? A. Yes, it is a theory.

(Testimony of B. D. Stewart.)

Q. Sure—is based upon the proposition that the whole mass is what you have called homogenous. That means, if I am correctly informed, that all parts of the mass are of the same character? [646]

A. Yes; I think he makes a likeness there to a mass of jelly—the particles are the same.

Q. Or a sand hill,—suppose you had a bank where there was nothing in it but sand?

A. If the grains were of the same size and the same character that would be the same; yes.

Q. But where you have a great big boulder three or four feet through and very fine particles the size of said, there Dr. Becker would have considerable difficulty in figuring out the elastic curve, wouldn't he? A. He probably would have; yes.

Q. And so would anybody else?

A. Yes, it would be hard for anybody else to do.

Q. Your attention has been particularly called to the elastic curve since Mr. Hargraves gave you a book two or three weeks ago on it, hasn't it?

A. Yes, more particularly since then.

Q. You never read anything about it by Dr. Becker before that? A. No.

Q. And Mr. Hargraves let you have that little book,—do you know where he got that a few weeks before these cases were tried? A. No.

Q. Have you still got that book? A. No.

Q. You came pretty early upon the scene down there, Mr. Stewart, I understand you to say?

A. I was down there about 10 or 15 minutes afterwards, I think—I went down immediately after I heard the fire bell ring.

(Testimony of B. D. Stewart.)

Q. And you saw the mud and corruption in Izzy Goldstein's store, did you? A. I did; yes.

Q. What was that matter composed of? [647]

A. As you say it was mud largely.

Q. Was there any water in it?

A. There was a good deal of water content in it; yes.

Q. And that had come down the hill, hadn't it?

A. Probably had.

Q. Sure, and showed very strong evidences of water?

A. There was water mixed with it; yes.

Q. More in fact than could be squeezed out of this mass?

A. I wouldn't say that there was; no.

Q. You wouldn't be positive about that?

A. No.

Q. Now, then, suppose the stuff were as it was just prior to the slide and a considerable volume of water is poured on that mass, would that have any effect upon making that ground move?

A. It might if it could penetrate it immediately and become a part of it.

Q. The mere weight of that water below would have this effect, wouldn't it?

A. No; there would be very little weight on a slope of that angle.

Q. Now, you have been talking mathematically, and we will talk mathematically about the weight too. If the weight were ever so small it would still have its effect upon it, wouldn't it?

(Testimony of B. D. Stewart.)

A. Gravity would operate upon whatever water was on the surface.

Q. And the water would expedite the slide, wouldn't it?

A. That would be a very negligible weight, however—a small stream of water flowing over the surface, as compared with the weight of the mass itself.

Q. Let us suppose that the stream were of pretty large proportions and that the water had saturated the mass to the point, practically, of complete saturation and the mass was almost ready to move, it wouldn't take very much more to break the camel's back, would it?

A. Probably, if the mass had already started to move that would not have any effect on it at all—it would have slid anyway. [648]

Q. Yes, if the mass were ready to slide it would have slid anyway?

A. On account of the strains being set up.

Q. But if the mass had not already moved it might have been one of the causes of the movement?

A. No, I don't think so.

Q. You don't think so? A. No.

Q. Then it would not be the last straw on the camel's back?

A. I think it would be a very remote possibility.

Q. Now, in your opinion the water had nothing at all to do with this slide; is that the idea?

A. I don't think that surface water did, no.

(Testimony of B. D. Stewart.)

Q. And it was nothing but that cut that Koski had made that caused the slide?

A. That cut with the other conditions that existed there at the time.

Q. You have seen a good many other cuts around this town, haven't you? A. I have.

Q. You have been here a good many years. Isn't it a fact that practically all of the houses on that sidehill have cuts, more or less?

A. That is true.

Q. And no great attention has been paid to the presence of the elastic curve, has it?

A. No great attention, no; because in most cases, according to my observations, there have been means taken to bulkhead the point at which the cut is made.

Q. But there are a good many places in which there have been no such means taken?

A. Yes; and where those places occur I think you will find there is more or less sliding taking place.

Q. You mean there is a little crumbling off at the face? [649] A. No, there is sliding.

Q. Take a look at the big cut that is back of the General Hospital down there—you are acquainted with that cut, aren't you?

A. No, I have never seen it.

Q. Take a look at it—it is down there.

Q. I can see a cut back there, yes.

Q. It is quite a high bank and quite a deep cut?

A. Seems to be.

Q. Is there sliding there?

(Testimony of B. D. Stewart.)

A. There isn't a slide there now.

Q. There is crumbling going on on the face?

A. There may be surface erosions, but a surface erosion is different from the bulging I spoke of at the toe of the slope.

Q. The same state of facts exists at the administration building down there, doesn't it?

A. Probably does.

Q. The same state of facts exists with a number of other buildings? A. Probably does, yes.

Q. How long were you in the employ of the Alaska Juneau Company?

A. I have done considerable work for them—I never was actually in their employ.

Mr. RODEN.—That is all.

#### Redirect Examination.

(By Mr. HELLENTHAL.)

Q. Have you ever observed a particular place in Juneau, Mr. Stewart, where a cut was made in order to see just what happened?

A. You mean in order to determine whether a slide would take place or not?

Q. Have you ever observed the effect of a cut in connection with your own observations here?

A. Yes, I have.

Q. Can you tell the jury about a specific instance, and state [650] just how it acted?

A. There is a case just back of my house almost where it is still in operation.

Q. Explain the whole situation to the jury.

A. The case I have in mind is right back of

(Testimony of B. D. Stewart.)

Claude Erickson's house alongside of my house. There was an excavation made there in order to make room for his house. The cut was made there a number of years ago, and a concrete wall was put up in front of it to protect the house—in fact the back of the house is a concrete wall—and this sliding action has been taking place there ever since, and the pressure has become so great there—the tendency for the whole mass to slide has become so great—that that wall, which is at least a foot thick, is pushed right in so it is a concave curve now instead of a vertical wall, on account of the pressure of that whole bank.

Q. It assumed a rounded slope in front?

A. I think the same slope remained there for years until the cut was made.

Q. The concrete wall has assumed a bulging form? A. Bulging right out to his house, yes.

Q. Just as the mass—

A. It is due to those forces that I mentioned in my testimony.

Mr. HELLENTHAL.—That is all.

Q. (By Mr. RODEN.) And if that same principle had worked in this case, then Koski's house would have been shoved out here the same as Erickson's wall has been shoved out?

A. It would eventually, yes.

Mr. RODEN.—That is all.

(Witness excused.) [651]

**Testimony of John Trelons, for Defendant.**

JOHN TRELONS, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

**Direct Examination.**

(By Mr. HELLENTHAL.)

Q. State your name. A. John Trelons.

Q. Where do you live, John?

A. At the Alaska Juneau boarding-house.

Q. Were you living there on the 2d day of January, 1920? A. Yes, sir.

Q. The day that the slide occurred? A. Yes.

Q. On that day did you come to town?

A. Yes, sir.

Q. At about what time did you leave the boarding-house?

A. I left the boarding-house after half-past ten,—between half-past ten and eleven.

Q. You do not know the exact time? A. No.

Q. Did you pass through No. 3 tunnel on your way to town? A. Yes, sir.

Q. When you got to where the lights were in the tunnel were the lights burning?

A. The lights were burning.

Q. Now, then, did you pass the trommel screen afterwards? A. Yes, sir.

Q. When you got to the trommel screen house was there any water coming from the spout?

A. Not that I know of.

(Testimony of John Trelons.)

Q. No water? A. No.

Q. You passed right by it? [652]

A. Yes, sir.

Q. Within about how many feet of it?

A. Right on the side of it—about 5 or 6 feet.

Q. About 5 or 6 feet away from the spout?

A. Yes, sir.

Q. Was the trommel screen running?

A. Yes, sir.

Q. How could you tell it was running?

A. I heard the noise of it.

Q. Then you went downtown?

A. I went downtown on the trail.

Q. And you afterwards heard the slide had happened? A. Yes; that I saw from the street.

Q. You were not at the slide when it happened?

A. I didn't know it before I saw it.

Q. About what time was it when you passed the trommel-screen house?

A. It must be around 5 to 10 minutes to eleven.

Mr. HELLENTHAL.—That is all.

#### Cross-examination.

(By Mr. RODEN.)

Q. How long have you been in the employ of the company? A. What?

Q. How long have you worked for the company?

A. About 4 years.

Mr. RODEN.—That is all.

(Witness excused.) [653]

**Testimony of Jake Cropley, for Defendant.**

JAKE CROPLEY, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

**Direct Examination.**

(By Mr. HELLENTHAL.)

Q. You may state your name.

A. Jake Cropley.

Q. You are a son of Ike Cropley who formerly lived here? A. Yes, sir.

Q. You are working for the Alaska Juneau Company, aren't you? A. Yes, sir.

Q. Were you working for the Alaska Juneau Company on the 2d of January, 1920?

A. Yes, sir.

Q. And on the 31st of December?

A. Yes, sir.

Q. On the 31st of December, 2 days before the slide, when did you go to work in the morning?

A. I went to work maybe,—well, I left home about 6:30.

Q. What route did you take in going to work with reference to where this trommel screen was,—you know where that was, don't you?

A. Yes, sir; I took the Bergmann route and went right up by the screen.

Q. How far were you from the spout of the screen as you passed by there?

A. I should judge about 5 or 6 feet.

(Testimony of Jake Cropley.)

Q. What time was it in the morning when you passed that screen on the 31st?

A. Oh, it was about a quarter to seven—10 minutes to seven.

Q. A few minutes before 7 o'clock?

A. Yes, sir.

Q. You took the train up to the mine? [654]

A. Yes, sir.

Q. At that time was there any water coming from the spout of the screen? A. No, sir.

Q. Now, on that day when did you come back from work? A. About a quarter-past four.

Q. In the afternoon? A. Yes, sir.

Q. Did you again pass the screen at that time?

A. Yes.

Q. Was there any water coming from the spout of the screen at that time? A. No.

Q. The next morning did you go to work?

A. No, I didn't.

Q. You didn't go to work on the morning of the first?

A. No; I went to work on the afternoon shift on the first.

Q. Oh, in the afternoon; you went to work on the afternoon shift, on the first? A. Yes, sir.

Q. What time did you pass the screen then?

A. 2 o'clock.

Q. At 2 o'clock the afternoon of the first you passed this trommel-screen house where the spout was? A. Yes, sir.

Q. At that time was there any water coming from the spout? A. No.

(Testimony of Jake Cropley.)

Q. When did you come back off shift?

A. We come back about a quarter to twelve.

Q. At that time,—that was a quarter to twelve at night? A. Yes.

Q. At that time did you pass the screen again?

A. Yes. [655]

Q. Was there any water coming from the screen then? A. No.

Q. Now, the next day you didn't go up until afternoon? A. Yes, sir.

Q. On your way up to the mine did you stop at the place where the penstock was? A. We did.

Q. Did you go around there any?

A. I went down to the penstock.

Q. You went down to the penstock? A. Yes.

Q. Did you go around the penstock where the spout came out?

A. I went right down underneath where the penstock spout was.

Q. At that time was there any trench or cut in the ground made by the running water?

A. There was not.

Q. If there had been you would have seen it?

A. I would have.

Q. What, if anything, occurred very shortly before the slide—before that time, in the way of a snowslide up the hill that you noticed?

A. There was a little snowslide come down there in a little trench right by the penstock, and it washed a lot of loose dirt down underneath the penstock. There was a couple of little slides that

(Testimony of Jake Copley.)

winter—that one went across there just before we got to the dry-room and washed a lot of loose earth down the hill.

Q. That was laying in by the penstock?

A. Yes.

Q. Do you know where the water falls off the snowsheds and spouts off the flume at the old portal of No. 3 tunnel? A. I do.

Q. When did you first observe that?

A. The first time I ever noticed it was the time they had the [656] flood down in the Casey Shattuck addition.

Q. Where were you?

A. I was down at the city dock.

Q. That was the first time you ever noticed the water coming over that place? A. Yes.

Q. Where did you think the water was coming from when you saw it at that time?

A. I thought the flume or something was busted there, the way it looked to me.

Q. That was the way it looked to you?

A. Yes, that was the way it looked to me.

Q. That water was coming out of the flume?

A. Yes, before I knew what it was.

Mr. HELLENTHAL.—You may cross-examine.

#### Cross-examination.

(By Mr. RODEN.)

Q. Has the Alaska Juneau got anything up there to shut off this water that comes over the snowsheds? A. What is that?

(Testimony of Jake Cropley.)

Q. Has the Alaska Juneau any arrangements up there to shut off the water that comes over the snowsheds?

A. I don't think they have—I don't know anything about it.

Q. How long have you worked up there, Jake?

A. I think this is my third winter I have worked for them up there.

Q. Your father worked for them how long?

A. My father worked for the Treadwell Company over on the Treadwell ditch for 27 years.

Mr. RODEN.—That is all.

(Witness excused.) [657]

#### **Testimony of R. E. Beistline, for Defendant.**

R. E. BEISTLINE, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

##### **Direct Examination.**

(By Mr. HELLENTHAL.)

Q. You may state your name.

A. R. E. Beistline.

Q. Where do you live, Mr. Beistline?

A. Juneau.

Q. Are you working for the Alaska Juneau Company? A. Yes.

Q. Were you working for them on January 2, 1920, the day of the slide? A. Yes, sir.

Q. Where were you in the forenoon of that day?

A. I was at the beach on that day.

(Testimony of R. E. Beistline.)

Q. What, if anything, did you observe in the way of an electric flash on the hillside in the direction of where the slide afterward occurred?

A. I was in No. 2 warehouse, and I noticed the flash. I was looking toward the bay and I seen a flash come over the building—the reflection of a flash.

Q. About what time of day was that?

A. Between 9:30 and 10 o'clock.

Q. Now, Mr. Beistline, were you ever employed as flume tender by the Alaska Juneau Company?

A. I was.

Q. For how long a period? A. For seven years.

Q. Do you know where the water runs over the sheds down over the flume near the old portal of No. 3 tunnel? A. Yes, sir.

Q. At the time of the Casey Shattuck flood, in the afternoon, [658] where were you?

A. I was on the other side of No. 1 tunnel, in the Last Chance Basin.

Q. That would up toward the mine?

A. Yes, sir.

Q. What, if any, instructions did you get at that time from your downtown office?

A. I received word from the superintendent to shut off the water—the water was running over No. 3 tunnel.

Q. What did you do?

A. I went and shut off the water, and later I got another message to shut off the water and I came through and reported that the water was al-

(Testimony of R. E. Beistline.)

ready shut off. I come through and found there was no trouble at all with the flume, that the water was coming over the snowsheds.

Q. You went and made an examination yourself as to whether there was any water coming from the flume between No. 3 tunnel and the mill?

A. Yes, sir.

Q. What did you find?

A. The water was coming over the snowsheds at that time.

Q. And shooting off the flume? A. Yes, sir.

Q. And there was no water coming from the flume at all? A. No, sir.

Q. No place in the flume where there was any water coming out? A. No, sir.

Q. While you were acting as flume tender were there any complaints made to you by persons downtown with reference to the overflowing of the water from the flume at the point where the water comes over the snowsheds?

A. There was several.

Q. That was a matter of rather frequent occurrence? A. Yes, sir. [659]

Q. People talked to you and complained to you that the water was coming from the Alaska Juneau flume at that point? A. They did.

Mr. HELLENTHAL.—That is all.

#### Cross-examination.

(By Mr. RODEN.)

Q. Who made those complaints?

(Testimony of R. E. Beistline.)

A. I can name two; there was Nels Sorby and Dr. Pallister.

Q. Where is Dr. Pallister now?

A. I don't know.

Q. He isn't here? A. No, sir.

Q. Has the Alaska Juneau Company got any arrangements to shut off the water that comes over the snowshed?

A. No, that isn't corralled at all—that comes from the mountain.

Q. I am asking you if they have any means of shutting that off? A. No.

Q. If anybody telephoned up there to shut that off that wouldn't stop half an hour after the telephone message was sent, would it? A. No.

Mr. RODEN.—That is all.

Q. (By Mr. HELLENTHAL.) That is gulch water that comes down Portal Gulch?

A. Yes, sir.

Mr. HELLENTHAL.—That is all.

(Witness excused.) [660]

#### **Testimony of Edward Dowling, for Defendant.**

EDWARD DOWLING, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

#### **Direct Examination.**

(By Mr. HELLENTHAL.)

Q. You may state your name.

A. Edward Dowling.

!(Testimony of Edward Dowling.)

Q. Where do you live?

A. Down back of Frank Roberts' place.

Q. You live in Juneau? A. Yes.

Q. Are you working at the Alaska Juneau Company? A. Yes, sir.

Q. What is your line of work—what do you do for the company? A. Flume-tender.

Q. As such flume-tender you look after the Gold Creek flume of the Alaska Juneau Company?

A. Yes, sir.

Q. That is the flume that leads from Gold Creek to the mill? A. Yes, sir.

Q. Were you so employed during the latter part of December, 1919 and the early part of January 1920? A. Yes, sir.

Q. On the 31st day of December, 1919, did you go to that flume? A. Every morning.

Q. Did you go to the penstock?

A. Every morning.

Q. You know where the penstock was situated?

A. Yes, sir.

Q. And the trommel screen? A. Yes, sir.

Q. And you went there on the morning of December 31, 1919? A. Yes, sir. [661]

Q. What did you find when you got there—was the trommel screen running all right?

A. Yes, sir.

Q. Was there any water coming out of it?

A. No, sir.

Q. What time was it?

A. About ten minutes after seven.

(Testimony of Edward Dowling.)

Q. When did you next go to the penstock?

A. Every morning I go to the penstock,—every morning about ten minutes after seven.

Q. On the 31st of December did you go there again that day after you had been there at 10 minutes after seven in the morning?

A. Yes; I came out about half-past two in the afternoon.

Q. Did you go there every morning and afternoon?

A. I visited it twice every day, in the morning and afternoon.

Q. That was part of your regular routine?

A. Yes, sir.

Q. When you first went on duty in the morning?

A. Yes, sir.

Q. And the last thing just before you got off in the afternoon? A. Yes, sir.

Q. When you got to the penstock on the 31st of December, two days before the slide, what time was it? A. In the morning?

Q. In the afternoon.

A. I came there about half-past two, I guess.

Q. At that time was there any water running out of the spout? A. No, sir.

Q. Was the trommel screen revolving?

A. No water running out at all.

Q. There was no water running out and the trommel screen was running? A. Yes, sir.

Q. The next morning, the day before the slide, the first day of [662] January, did you go there

(Testimony of Edward Dowling.)

again on that morning? A. Yes, sir.

Q. How did you find the trommel screen that morning? A. It was working.

Q. Was there any water coming from the spout?

A. No water at all.

Q. What time was it when you went there that morning?

A. I generally go there just after seven o'clock every morning.

Q. It was just after seven this morning?

A. Ever since I have been on the job.

Q. In the afternoon of the day before the slide you went there again? A. Yes, sir.

Q. At your usual time?

A. About half-past two.

Q. At that time was there any water coming from the discharge spout?

A. No, sir; none at all.

Q. Was the trommel screen running all right?

A. Running all right.

Q. Now, the next morning, the morning of the slide, did you go to the trommel screen?

A. Just after seven o'clock.

Q. When you were there at that time did you examine it? A. Yes, sir.

Q. Was there any water coming from the spout at that time? A. None at all.

Q. Was the trommel screen running?

A. Running, yes.

Q. Running. All right. Now, how much water was there in the flume on the 31st of December

(Testimony of Edward Dowling.)

and the 1st of January, the two days before the slide? A. One inch.

Q. About one inch? [663]

A. Yes, sir.

Q. That is, about one inch at the regulating gate? A. One inch at the gate.

Q. The regulating gate was up how much?

A. One inch.

Q. That is your regular boiler feed supply?

A. Yes, sir.

Q. How much water was there on the morning of the slide, when you went up the flume?

A. One inch.

Q. Just the same as there had been the two days before? A. Yes, sir.

Q. Now, Mr. Dowling, that afternoon, the afternoon of the big slide, did you have any slide up on the flume?

A. I had three slides up toward the dam.

Q. You had three slides up toward the dam?

A. Yes, sir.

Q. Where is the dam situated?

A. It is way up on Gold Creek.

Q. Up toward the Ebner works?

A. Yes, sir.

Q. And there were three slides there that forenoon? A. Yes, sir.

Q. Before noon? A. Yes, sir.

Mr. HELLENTHAL.—You may cross-examine.

(Testimony of Edward Dowling.)

Cross-examination.

(By Mr. RODEN.)

Q. On the morning of the slide there was just one inch of water coming in at the gate; is that right?

A. One inch of water coming in at the gate.

Q. How long was it before more water got into the flume?

A. Oh, there was no water got in there at all. When I came in from the dam I found the gate had been raised up— [664] that is the only time there had been any water for a long time in the flume.

Q. How much was coming in then?

A. Seven inches of water.

Q. 7 inches of water was coming in, and the gate was raised to 7 inches?

A. Somebody raised it up, yes.

Q. How far is it from the gate to the dam?

A. Oh, I should judge about half a mile.

Q. And you spent most of your time from, say, about 8 o'clock until 10 or so around the dam?

A. No, no; when I go along I go to my gate, from my gate up to my high line, and from the high line to the dam.

Q. The high line?

A. Yes; that is the tank way up on the hill that furnishes water for the cook-house.

Q. You didn't come back to the gate, anyhow, before say about half past ten?

A. I got back to the gate at 10 minutes to eleven.

(Testimony of Edward Dowling.)

Q. Then where did you go to, Mr. Dowling?

A. I came way up from the flume again.

Q. You came this way then?

A. No, I went up the creek.

Q. When did you come down this way?

A. Come down this way,—well, I came down some time after eleven o'clock.

Q. About how long after eleven?

A. I couldn't say exactly what time it was after eleven—some time after eleven, anyhow.

Q. How much after eleven?

A. I couldn't say—it was some time after eleven—I couldn't tell you how much after eleven it was.

Q. The water was running in the flume, anyhow, when you came down this way? [665]

A. Why, yes; it had been running in the flume for months as far as that goes.

Q. Everything was all right that morning?

A. Everything was all right when I went up, yes.

Q. There was nothing wrong between the gate and the tunnel on this side when you came along there?

A. There was nothing wrong when I went on shift in the morning—everything was all right—nothing wrong at all.

Q. The only thing that happened along there you had some little slides up above the gate?

A. I had two or three small slides up near—close to the dam.

Q. That was close to the gate?

A. Close to the dam.

(Testimony of Edward Dowling.)

Q. Did anything happen between the gate and the penstock? A. No, sir.

Q. Nothing at all? A. I didn't see anything.

Q. You didn't have any slides along there?

A. No.

Mr. RODEN.—That is all.

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. Mr. Dowling, there were no slides there that you know of?

A. Not that I know of—I had been working up at the dam all day.

Q. You don't know what happened along there?

A. No.

Mr. HELLENTHAL.—That is all.

Recross-examination.

(By Mr. RODEN.)

Q. If there had been any you would have seen them?

A. I don't know that I would,—I have my work to do, taking care of the flume.

Q. What you have to do in particular is to walk from the gate to the penstock? [666]

A. I didn't come down to the penstock until half-past two in the afternoon.

Q. How far did you come say around eleven o'clock?

A. I came down to my gate to see how my gate was—the water that furnishes the mill.

Q. Then you came down this way?

(Testimony of Edward Dowling.)

A. Yes, I came along the flume to see how things were working along the flume.

Mr. RODEN.—That is all.

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. At that time, Mr. Dowling, did you come down to No. 3 tunnel? A. Yes.

Q. No further? A. No further, no.

Q. You went back up again on the flume?

A. I went back up again on the flume.

Q. Do you know anything about that slide that Kelly had up there?

A. Well, there had been a slide up there—I didn't pay much attention—Mr. Kelly was looking to that.

Q. Mr. Kelly was looking after that and you had nothing to do with it? A. No.

Mr. HELLENTHAL.—That is all.

Q. (By Mr. RODEN.) You never even saw it?

A. No, I never saw it, but I know there was a slide there. Kelly was attending to that—it wasn't any of my business.

Q. (By Mr. RODEN.) You couldn't see it from the track? A. No.

Q. (By Mr. RODEN.) There is a snowshed there? A. There is a snowshed there, yes.

Mr. RODEN.—That is all.

(Witness excused.) [667]

**Testimony of Henry G. Davidson, for Defendant.**

HENRY G. DAVIDSON, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

**Direct Examination.**

(By Mr. HELLENTHAL.)

Q. State your name. A. Henry G. Davidson.

Q. Where do you live?

A. Alaska Juneau boarding-house.

Q. Are you working for the Alaska Juneau Company? A. I am.

Q. Were you working for the Alaska Juneau Company the latter part of 1919 and January, 1920?

A. The Alaska Juneau.

Q. Were you working for the Alaska Juneau at that time? A. Yes.

Q. What position were you holding with the Alaska Juneau Company at that time?

A. Night watchman.

Q. As night watchman did you have any duties to perform with reference to visiting the penstock?

A. Well, I was supposed to go to the screen and keep all the leaves down out of the spout—sweep it down with a broom.

Q. How many times during the night did your duties call you to the penstock?

A. Once every hour.

Q. Now, on the night of the 30th of December did you go there? A. I did.

(Testimony of Henry G. Davidson.)

Q. During that night during your visits there was there any water running out of the penstock?

A. No.

Q. Was the screen revolving?

A. The screen was going, yes, sir. [668]

Q. Everything was all right? A. Yes.

Q. The next night, the night of the 31st, did you again frequent the penstock as usual?

A. Yes, sir.

Q. Made your visits there during the night?

A. Yes.

Q. What time did you go there the first time at night?

A. Well, get around there about 20 minutes to nine.

Q. A little after nine?

A. It would be about 20 minutes to nine when I would get there. I would ring in at nine—on the hour there.

Q. On that night of December 31st, 1919, during your visits at the penstock was there any water coming from the spout? A. No.

Q. Was the screen revolving?

A. The screen was revolving, yes.

Q. Now, on the night of January 1st did you make your usual visits to the penstock?

A. Yes, sir.

Q. At that time during any of your visits there was there any water coming from the spout?

A. No, sir.

Q. Was the screen revolving?

(Testimony of Henry G. Davidson.)

A. The screen was revolving, yes, sir.

Mr. HELLENTHAL.—That is all.

(By Mr. RODEN.)

Q. You never saw any water coming from the spout? A. No.

Q. How do you make your rounds there, Mr. Davidson?

A. I go along the tramway there from the hoist to the penstock every hour, and ring up the clock at each end—I ring up [669] a clock in the dry-room as I go through to the penstock.

Q. How often did you do that?

A. Once every hour.

Q. How far do you have to go from the penstock to the place you ring in?

A. Go through the door and to the next building is all—about 12 feet.

Q. You have never seen any water come from the penstock? A. No, sir.

Q. Doesn't a little water come through there all the time? A. Through where?

Q. Through the spout.

A. Very little—just spatters if there is any.

Q. All the time?

A. Not all the time—just working the leaves out of the end of the screen there to the left of the spout, that is all; it isn't enough to take off the leaves because I have to go around there,—the first thing I examine my machine—the revolving machine here, then I go outside,—if it is all right there, I go outside on the platform and there is a

(Testimony of Henry G. Davidson.)

broom laying there for that purpose, to pull down the leaves, and the dry leaves won't go down there unless you work it down with this broom—take it down to the end of the spout.

Q. You have never seen that screen stop?

A. I seen it stop once.

Q. When was that?

A. That was in the summer,—I don't know—

Q. Which summer?

A. During the summer months.

Q. The summer before the slide? A. Yes.

Q. What stopped it? A. The belt was broke.

Mr. RODEN.—The belt was broke—that is all.

[670]

#### Redirect Examination.

(By Mr. HELLENTHAL.)

Q. There was no water coming through there then? A. No water.

Q. The water went right through the screen just the same? A. Yes?

Q. And no water was coming from the spout?

A. No.

Mr. HELLENTHAL.—That is all.

#### Recross-examination.

(By Mr. RODEN.)

Q. And the trommel was running?

A. No, the belt was broke and that afternoon it was fixed.

Q. Was the motor running then?

A. Out of the spout?

Q. Yes. A. No.

(Testimony of Henry G. Davidson.)

Q. The motor that runs the trommel screen.

A. Yes, the motor was running.

Q. So a man passing the trommel screen might hear the motor running and the trommel screen be stopped?

A. No—a small motor at the side of it—it don't make much noise.

Q. Can't you hear it when you pass by there?

A. The little motor?

Q. Yes. A. I don't know as you could.

Q. Can you hear it?

A. Sure I could hear it, but I knew that the trommel screen was stopped when I was coming along the top there.

Q. But I mean ordinarily when you pass there, or a man passes there, he can hear the motor run, can't he?

A. I don't know—it is a small motor—it runs quiet.

Q. And a man might pass there and not hear the motor running? [671]

A. If the trommel screen is running you can hear that a quarter of a mile away.

Q. A quarter of a mile away?

A. A good distance, anyway—you would know what it was.

Mr. RODEN.—That is all.

(Witness excused.)

**Testimony of D. F. Kelly, for Defendant.**

D. F. KELLY, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

**Direct Examination.**

(By Mr. HELLENTHAL.)

Q. State your name. A. D. F. Kelly.

Q. Where do you live? A. Juneau.

Q. How long have you lived here?

A. About 8 years.

Q. Before that time you lived in Douglas, didn't you?

A. Oh, yes; I have lived in Douglas for 12 or 13 years.

Q. You have been in Aalska a good many years?

A. Twenty-two.

Q. Did you ever work for the Alaska Juneau Company? A. Yes.

Q. Were you working for that company on the 2d day of January, 1920, the day of the slide?

A. Yes, sir.

Q. What position were you holding with the company at that time?

A. I am supposed to be track man and look after the track.

Q. You look after the track? A. Yes.

Q. And that is what you were doing on that morning? [672] A. Yes, sir.

Q. In the morning of that day, the morning of

(Testimony of D. F. Kelly.)

January 2, 1920, what time did you go to work?

A. I went to work at 7 o'clock.

Q. Where did you go to work—what was the first thing you did?

A. The first thing I done was to fix up a switch near the tipple.

Q. Then what did you do?

A. Then I went over to near the change room to cut some holes for to let down the water that was seeping through there from the snowshed on to the track—to let it through there so it wouldn't form an iceberg on the track. What is known as the old portal was used at that time as a side track.

Q. Was there much water running at that time?

A. There was a good deal of water running over the snowshed and also running in over this floor that constitutes the track.

Q. What did you do to take care of that water?

A. I took an ax and cut some 15 or 20 holes there, and cleaned out the rails, and then stepped through the change room and went out to the hurdy-gurdy and took a look at it.

Q. What do you mean by the hurdy-gurdy?

A. That is the trommel screen, I believe is the scientific name for it.

Q. That is the big affair there in the penstock?

A. The common name among us roustabouts was the hurdy-gurdy.

Q. You went to the hurdy-gurdy about that time, Mr. Kelly?

A. About 8:30—I don't look at my watch or time

(Testimony of D. F. Kelly.)

myself, but when I got over to the blacksmith-shop it was 10 minutes after nine—allowing myself half an hour to go there would be 8:30—somewhere along there.

Q. When you went to the hurdy-gurdy did you see whether it was running all right?

A. I did—I stepped right down and saw that it was running all right.

Q. Taking care of the water all right? [673]

A. There was very little water coming.

Q. But it was taking care of whatever was coming? A. Yes, running all right.

Q. Was there any water running out of the spout? A. Not that I could see.

Q. Did you examine the spout itself at that time?

A. Not in particular—I just looked at the screen and it was going all right—there was very little water—it was running all right—no overflow of any kind.

Q. Everything was in good order? A. Yes.

Q. Then where did you go?

A. I went from there, as I said, to the blacksmith-shop; from there in to the Gold Creek tunnel where I was surfacing track.

Q. Then that forenoon did you go back to the north portal of No. 3 tunnel?

A. Well, yes; I had been working probably an hour or so when the master mechanic come in and told me there was a slide come down on the flume at the north portal of No. 3 tunnel and for me to go up and clean it out.

(Testimony of D. F. Kelly.)

Q. Did you go there then? A. Yes, sir.

Q. Did you take a couple of men with you or did you go alone? A. I took two men with me.

Q. What time was it when you got to the north portal of No. 3 tunnel, Mr. Kelly—about what time?

A. About 11 o'clock.

Q. After you got there what did you find?

A. I found that a slide of mud or rocks or dirt, etc., had come down there and filled the intake of the flume—filled up the two wings so that the water was running over—running into the tunnel and from there into the flume.

Q. Into the main flume?

A. Into the main flume, yes. [674]

Q. The flume that was filled by the slide, that wasn't the main flume?

A. No; it was a side flume that run from there into the penstock and from that down into Gold Creek.

Q. That was a side flume that was built to take care of surface water of the sidehill, to keep it from getting into the main flume? A. Yes, sir.

Q. And it ran into a little penstock and that was connected with a gutter that ran down into Gold Creek? A. Yes, sir.

Q. So as to take care of that surface water?

A. Yes, sir.

Q. And that flume had been filled up?

A. Yes, sir.

Q. As a result of that what, if anything, in the way of leaves and stuff found its way into No. 3 tunnel?

(Testimony of D. F. Kelly.)

A. It was carrying dry leaves and rubbish of that kind right with it into No. 3 tunnel.

Q. And that got into the main flume?

A. Ran right into the main flume; yes.

Q. Now, Mr. Kelly, I show you a picture and direct your attention to the snowsheds at the portal of No. 3 tunnel—this is marked Defendant's Exhibit No. 3, and I will ask you whether there was that much water coming over those sheds that morning,—did you notice the sheds that morning?

A. Oh, yes; I went there for that purpose, to get rid of that water, because I had had trouble with it before.

Q. Was there that much water running that morning over the snowsheds—that much water more or less running?

A. I would think from the appearance of that that there was more water—it looks to me here to be one little stream of water but that morning there was quite a sheet of water along the snowsheds running over. [675]

Q. That morning, Mr. Kelly, was it raining?

A. Oh, we will say that that is all right rather than have any dispute about it,—we will call that thing all right.

Q. That shows the conditions there except if anything there was more water?

A. Yes; I don't think that you would go to Hades for that.

Q. Was it raining that morning?

A. Yes, raining hard.

(Testimony of D. F. Kelly.)

Q. Was there any snow on the ground above the track? A. Yes.

Q. What was the snow doing?

A. Melting and running down.

Q. Causing a flood of water in the gulch?

A. Yes; causing a flood of water to come over the snowshed and on down into the gulch, yes.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Mr. RODEN.)

Q. Now, Mr. Kelly, you had seen it rain just as hard as it was raining this morning a good many times before that, hadn't you?

A. Oh, yes; I have seen it rain as hard on one or two occasions as it was then,—the day of the real estate lowering affair it rained awfully hard.

Q. The day of what?

A. The day of the real estate lowering affair—the time it cut up the caper down in Gold Creek. I had an \$800 lot and I have been trying to sell it for \$250 ever since so I have always called it a real estate lowering. If that isn't the proper name for it I don't know.

Q. It was raining hard that day?

A. Yes, it was raining hard that day, and it was raining about 11 o'clock, when I went up there, about as hard as it was on [676] the real estate lowering affair—that is my judgment of it.

Mr. RODEN.—That is all.

Q. (By Mr. HELLENTHAL.) When the real

(Testimony of Charles Smith.)

estate was lowered there was no snow on the ground either, was there?

A. It causes me a bitter taste in my mouth to speak of that.

Mr. HELLENTHAL.—All right; that is all.

(Witness excused.)

**Testimony of Charles Smith, for Defendant.**

CHARLES SMITH, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. State your name. A. Charles Smith.

Q. Where do you live?

A. I live out on Salmon Creek road a ways.

Q. Are you working for the Alaska Juneau Company? A. Yes, sir.

Q. Were you working for the Alaska Juneau Company in the latter part of December, 1919, and the early part of January, 1920? A. Yes, sir.

Q. On the 31st of December, 1919, about what time in the morning did you go to work?

A. Well, it was about 7 o'clock—pretty close to seven.

Q. In going to work—do you know where the penstock of the Alaska Juneau Company was, the one that is referred to in this case? A. Yes.

Q. Near the portal of No. 3 tunnel? A. Yes.

Q. At that time as you went to work did you pass

(Testimony of Charles Smith.)

the penstock? [677] A. Yes, sir.

Q. How far from the spout did you pass?

A. Well, I judge it was about six—between six and seven feet.

Q. The trail leads right past it? A. Yes.

Q. That was at about what time, Mr. Smith?

A. That was about, between 5 and 10 minutes to seven.

Q. Now, at that time was there any water coming from the spout at the penstock as you passed?

A. No, sir.

Q. Was the penstock running all right—revolving? A. The screen was revolving, yes.

Q. The screen was revolving in the penstock. That afternoon what time did you come from work?

A. It was around 4 o'clock.

Q. When you passed there on that occasion was there any water coming from the spout?

A. No, sir.

Q. You again passed there about 4 o'clock—you came down that same trail?

A. Yes, I came down that same trail.

Q. Was the screen revolving at that time?

A. Yes, sir.

Q. The screen made a lot of noise, didn't it?

A. Yes, it made a lot of noise.

Q. If it had stopped you would have been attracted to it by the fact that it was silent—isn't that it? A. Yes.

Q. It made a great deal of noise?

A. Yes; and in passing you get used to it, and if

(Testimony of Charles Smith.)

it would stop you would naturally notice it.

Q. On the morning of January 1st, the day before the slide, did you go to work again?

A. Yes, sir. [678]

Q. At that time did you pass the trommel-screen house? A. Yes, sir.

Q. What time in the morning was it?

A. It was right around 7 o'clock, pretty close.

Q. Was there any water coming from the spout at that time when you passed there? A. No, sir.

Q. Was the screen revolving?

A. It was revolving that morning, yes, sir.

Q. On the afternoon of the 1st of January, the day before the slide, what time did you come from work? A. Right about 4 o'clock.

Q. Now, as you came from work did you again pass the trommel-screen house? A. Yes, sir.

Q. And was there any water coming from the spout at that time? A. No, sir; I didn't see any.

Q. Was the screen revolving?

A. It was revolving, yes.

Q. On the morning of the slide at what time did you go to work?

A. About 7 o'clock—about the same time every morning.

Q. About the usual time? A. Yes.

Q. Did you again pass the trommel-screen house on your way to work? A. Yes, sir.

Q. At that time was there any water coming from the spout? A. No, sir; I didn't see any.

Q. Was the screen revolving?

(Testimony of Charles Smith.)

A. Yes, it was revolving.

Q. You have been passing there, Mr. Smith, ever since, daily, haven't you, twice a day?

A. No, not ever since.

Q. For how long? [679]

A. Well, I quit there in March, I guess it was, after that, and I started to work again in December.

Q. Well, anyhow, until March of that year you passed there twice a day? A. Yes.

Q. Did you ever observe any cut or trench leading from the trommel screen spout down the hillside there? A. No, sir, I did not.

Q. If there had been any such thing there would you have seen it from the trail by which you went?

A. I certainly would.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Mr. RODEN.)

Q. Now, when you passed on the morning of the 2d were you alone or was anybody with you?

A. Well, I couldn't just say—there was lots of times I caught up with someone or someone would catch up with me.

Q. You remember pretty well what happened that morning and you ought to be able to remember that too.

A. Not in that particular case. A good many mornings you would catch up with some fellow or some fellow catched up with you.

Q. Have you ever seen that trommel screen stop at any time? A. Yes, I have seen the screen stop.

(Testimony of Charles Smith.)

Q. How often?

A. Well, I judge I have seen it stop a couple of times.

Q. The day of the slide when did you come out of the mine?

A. I came out between one and two o'clock, I think.

Q. You don't remember whether there was any water in the ditch at that time or not?

A. Which ditch do you have reference to?

Q. The ditch coming through the tunnel there?

A. No, I don't. [680]

Q. You don't remember that? A. No.

Q. You don't remember whether there was any water in the flume at that time or not? A. No.

Q. Do you remember whether the trommel was stopped at that time?

A. I don't remember that.

Mr. RODEN.—That is all.

(Witness excused.)

#### **Testimony of Fred Holmquist, for Defendant.**

FRED HOLMQUIST, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

#### **Direct Examination.**

(By Mr. HELLENTHAL.)

Q. State your name. A. Fred Holmquist.

Q. Where do you work?

A. I am not working now.

(Testimony of Fred Holmquist.)

Q. Where were you working at the time this slide happened on January 2, 1920?

A. The Alaska Juneau.

Q. On the morning of the 31st of December, two days before the slide, did you go to work?

A. Yes, sir.

Q. You did not pass by the trommel screen going to work, did you?

A. No, I didn't—I took the tramway.

Q. But coming back from work every day you passed there? A. Yes.

Q. On the 31st what time was it that you passed the trommel screen—December 31st, two days before the slide? A. About 4 o'clock. [681]

Q. When you passed there at that time was there any water coming from the spout of the trommel screen? A. No.

Q. On the next day you passed there again in the afternoon? A. Yes.

Q. Was there any water coming from the spout at that time? A. No.

Q. You didn't pass there the morning of the slide?

A. No, I didn't pass there the morning of the slide.

Q. Now, on the night of January 1st where were you living? A. At John Holmquist's house.

Q. Living at your brother's house? A. Yes.

Q. Where is that situated with reference to Portal Gulch—where is that house?

A. It is right over at Gastineau Avenue, across

(Testimony of Fred Holmquist.)

over from the General Hospital, right below No. 3 tunnel.

Q. Right below the mouth of No. 3 tunnel which is situated right in what is called Portal Gulch, or do you know where that is? A. What?

Q. Do you know where Portal Gulch is?

A. No, I am not—

Q. Anyhow the house is situated right in that gulch that comes down from the mouth of No. 3 tunnel; is that right?

A. Yes; you see the house is a little closer to the General Hospital than she is to the administration building—it is a little further over, and a canyon coming down there and a creek coming down alongside of John's house too.

Q. Comes right alongside of the house?

A. Yes; just about 7 or 8 feet from the corner of the house.

Q. How much water was there running in that creek on January 1st, the night before the slide, when you came home that night? [682]

A. The night before there was a whole lot of water coming down because I remember when I went to bed in the evening it was making a noise; I was sleeping in the corner right close to the creek and I had the window open, and they have a plank bottom in the flume that the city made up there, and the small rocks were rolling in the flume, making a noise so I couldn't hardly sleep—in the evening there was a lot of water coming down, and John used to go out and clean out the small leaves and rocks that blocked it up there.

(Testimony of Fred Holmquist.)

Q. Was there ever any other time when there was as much water as there was that night, that you remember?

A. I couldn't say exactly—I remember some time before but I couldn't say when.

Q. But this was more water than you had had there for a long time?

A. Yes; it was more than we had for a long time there.

Q. And was it more water than you have seen since then?

A. I never see that much water there before that I noticed.

Q. And you have never seen that much there since? A. No, I don't think so.

Q. Did you notice the water running off the snowsheds that day?

A. No, I didn't look up that way.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Mr. RODEN.)

Q. The snowsheds are right above your house, aren't they?

A. Right above where I was living at that time—a little further over this way.

Q. But you didn't look up?

A. No, I didn't look up that way.

Q. Have you ever seen any water run over the snowsheds?

A. Yes; when I pass by now, when I am up in the Alaska Juneau boarding-house, when I go up every

(Testimony of Fred Holmquist.)

night and come down every morning I see the water.  
[683]

Q. Is there water coming over the snowsheds today?

A. I didn't look up that way—I couldn't say.

Q. When did you quit working for the Alaska Juneau Company?

A. I think it was day before yesterday—the 20th, I think.

Q. Your contract expired, of course?

A. No, we didn't finish.

Q. Your brother is still up there, isn't he?

A. Yes, he is up there.

Q. John? A. Yes.

Q. He is foreman, isn't he? A. Yes.

Q. And the other brother is up there, Axel?

A. Yes.

Mr. RODEN.—That is all.

(Witness excused.)

#### **Testimony of George W. Saum, for Defendant.**

GEORGE W. SAUM, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

#### **Direct Examination.**

(By Mr. HELLENTHAL.)

Q. State your name. A. George W. Saum.

Q. Where do you live? A. Juneau.

Q. Where are you employed?

A. Alaska Juneau mine.

(Testimony of George W. Saum.)

Q. Were you working for the Alaska Juneau Company on January 2d, 1920?

A. I was. [684]

Q. And you had been working there for some time before that? A. Yes, sir.

Q. On December 31st, two days before the slide, did you go to work that morning? A. I did.

Q. In going to work did you pass the trommel-screen house? A. I did.

Q. At about what time?

A. About 10 minutes to seven, I suppose.

Q. At that time was there any water coming from the spout at the trommel screen? A. No.

Q. On that day, the 31st of December, 1919, did you pass that place again coming from work?

A. I did.

Q. At what time? A. About 4 o'clock.

Q. Now, as you came down on that occasion was there any water coming from the spout? A. No.

Q. Was the screen running all right?

A. It was.

Q. The screen was running and making a lot of noise?

A. Yes; it made quite a lot of noise revolving.

Q. Now, the next day, the day before the slide, did you again go to work in the morning?

A. I did.

Q. At about what time?

A. Ten minutes to seven.

Q. Did you pass the trommel-screen house on your way to work that morning? A. I did.

(Testimony of George W. Saum.)

Q. Was there any water coming from the spout when you passed then? A. No. [685]

Q. That afternoon, the afternoon of the day before the slide, did you again pass the trommel-screen house coming from work? A. I did.

Q. At about what time?

A. It was a little before 4 o'clock that day.

Q. Was there any water coming from the spout when you passed then? A. No.

Q. On the next morning, the morning of the slide, did you pass the trommel-screen house on your way to work? A. I did.

Q. At about what time did you pass the trommel-screen house? A. Going to work?

Q. Yes. A. About ten minutes to seven.

Q. Was there any water coming from the spout of the trommel-screen house at that time?

A. No.

Q. How far from that spout is the trail that you passed over on these various occasions?

A. About 5 to 8 feet, something like that.

Q. A short distance—if there had been any water coming from the spout down there you would see it in going up and down the trail? A. Yes, sir.

Q. Could you possibly have missed seeing it?

A. Couldn't easily miss it looking right at it.

Q. You were looking right at it as you would go up the trail? A. Yes, sir.

Q. Now, Mr. Saum, there are some rocks lying about in the vicinity of that spout concerning which there has been some controversy,—do you know

(Testimony of George W. Saum.)

whether they were placed at that point before or after the slide?

A. It was quite a little—I saw rocks placed there before the [686] slide.

Q. They were there then at the time the slide happened?

A. Those rocks I saw about there were; yes.

Q. What rocks did you see about there?

A. I saw a man repairing the trail and piling the rock down there one afternoon when I was coming out of the mine—throwing the rock down on a little flat place there by the trommel screen.

Q. What was the name of the man you saw doing that? A. Mr. Kirk.

Q. Owen Kirk? A. Yes, sir.

Q. You are sure that was before the slide happened? A. Quite a while; yes.

Q. You have lived in this country quite a while, haven't you, Mr. Saum? A. About 30 years.

Q. Do you know of any slides that have happened in the vicinity of where this slide happened on January 2, 1920?

A. Yes, I know of two different slides down there.

Q. I wish you would tell the jury where those slides occurred.

A. There was one of them landed in Forrest's machine-shop—that was the first one that came down; and there was another one came down that landed just a little below, part of it a little below where Goldstein's present store is, which wrecked some of his cabins, and part of it landed down where the old Dispatch building is.

(Testimony of George W. Saum.)

Q. Another one happened by the old Dispatch building?

A. Yes, where the concrete building is.

Q. The slide at the Forrest machine-shop would be quite a little ways this side of where that recent slide occurred?

A. Well, it started about where Sharick's residence is at the present time.

Q. Up in that neighborhood? [687]

A. Yes, sir.

Q. How long ago was it that that happened?

A. I couldn't say what year—it was quite a while ago.

Q. The slide that was right above the Goldstein house—the Goldstein store, on that street, that you have referred to, when did that happen?

A. Well, it happened shortly after those cabins were built in there the other side of Mr. Goldstein's store.

Q. There were some cabins built in there and shortly after that there was a slide?

A. And when it landed down in the other place, where the Dispatch building is now, there was a man living in there named Johnson—they used to call him Ice Johnson—living in the cabin at that time—that is where the Dispatch building is now built.

Q. You remember that slide? A. Yes, sir.

Q. That was about how many years ago?

A. Oh, it is quite a number of years ago, but I couldn't say just exactly how long it was.

(Testimony of George W. Saum.)

Q. You remember, then, at least three slides in that neighborhood during the past 25 or 30 years?

A. Yes; I remember the slide in the Forrest shop because I was called there to help take out some rocks and stumps that had gone into the shop, and I went there to help clean it out.

Q. Do you remember when the Gastineau Hotel was built? A. Yes, sir.

Q. Where were you living at that time?

A. I was living right up the steps back of the Gastineau.

Q. Do you remember when they made an excavation there? A. Yes, sir.

Q. What, if anything, happened at the time that excavation was made? [688]

A. Well, when the excavation was made the ground began to slide in up there at different places.

Q. How did it affect the house where you were living?

A. Well, the house I was living in was wrecked pretty bad from the slide, so we couldn't open or close any doors in the house, and the chimneys were both broken in two.

Q. That house was standing up on the hillside some distance away from the excavation?

A. It was standing back on Gastineau Avenue, I believe they call it now.

Q. It was back about 100 feet, back of the excavation? A. Yes, somewhere along there.

Q. Then what did the Gastineau people do to keep the dirt in place?

(Testimony of George W. Saum.)

A. They put in a bulkhead.

Q. Do you know of any other excavations that have been made that have caused the ground to start to move?

A. I don't really know of any other excavations that have caused any trouble, where a slide happened.

Q. Those were the only ones that came under your observation? A. Yes, sir.

Q. Bulkheads are generally put in where excavations are made? A. Yes, sir.

Q. As soon as possible? A. Yes.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Mr. RODEN.)

Q. How high was that cut that was made at the Gastineau Hotel—how deep?

A. How deep was the cut on the face of the cut?

Q. Yes.

A. At that time about 12 feet, I should judge.

Q. Wasn't it considerably more than that? [689]

A. Well, I never measured it, but I should judge, passing over it, that was about what it was.

Q. That began to slough in?

A. I don't think it exceeded that very much.

Q. That began to slough in?

A. It undoubtedly did.

Q. And the slide that you speak about that happened up at Sharick's, that came down the gulch, didn't it?

(Testimony of George W. Saum.)

A. Came down the gulch—no; it came from the adjoining lots right back of it—you are speaking of the time they were doing the excavating?

Q. No, I am talking about the time you are speaking of the slide that happened around Sharick's residence—you spoke about a slide at Sharick's residence? A. Sharick's?

Q. Whose residence was it you spoke about?

A. I didn't speak about any slide at Sharick's place. I said one slide that came down in the Forrest shop started up by where Mr. Sharick's residence is now.

Q. That came down a ravine, didn't it?

A. No, there is no ravine there.

Q. You testified in the case of Koski against the Alaska Juneau Company, didn't you? A. I did.

Q. Didn't you say then that this slide you refer to now as coming from the neighborhood of Sharick's residence came down a draw?

A. Came down a draw?

Q. Yes. A. No, sir, I don't think so.

Mr. RODEN.—That is all.

#### Redirect Examination.

(By Mr. HELLENTHAL.)

Q. There was another slide that occurred that came down above [690] Sharick's residence and came through there in that same neighborhood, wasn't there? A. Come through the same—

Q. There was a slide that came down the gulch near Sharick's residence at one time, 20 or 30 years ago, wasn't there?

(Testimony of George W. Saum.)

A. There was a small slide came down along where the old Russian Baths used to be.

Q. That was 20 or 30 years ago? A. Yes.

Q. That came down the gulch near Sharick's house? A. Yes.

Q. But that is a different slide than the one you cleaned out of Frank Forrest's machine-shop?

A. Yes.

Mr. HELLENTHAL.—That is all.

(Witness excused.)

#### Testimony of Charles Bland, for Defendant.

CHARLES BLAND, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

##### Direct Examination.

(By Mr. HELLENTHAL.)

Q. State your name. A. Charles Bland.

Q. At the time of the slide on January 2, 1920, were you working for the Alaska Juneau Company?

A. Yes, sir.

Q. What were you doing?

A. Running a motor.

Q. Where were you at the time the slide happened? A. Between the mill and No. 3 tunnel.

Q. At what point—what do you call that—the tipple? [691]

A. No, I was between the tipple and the No. 3 tunnel, about halfway.

(Testimony of Charles Bland.)

Q. Did you see the ore train coming on that occasion? A. Yes, sir.

Q. How do you know when the slide happened?

A. The ore train—the motor had switched around and there was a big blue flash come just after the ore train pulled in.

Q. As the ore train pulled in there was a big blue flash on the hillside? A. Yes, sir.

Q. You saw that flash? A. Yes, sir.

Q. At the time that flash happened what happened to the power? A. The power went off.

Q. The power was off of everything after that?

A. Yes, sir.

Q. There was one big flash?

A. There was one big flash.

Q. And that was just after the ore train ran into the tipple? A. Yes, sir.

Q. How long did it take the ore train to run from the point where the two tunnels come together to the tipple? A. About 4 or 5 minutes.

Q. You are an engineer—a motorman on these cars? A. Yes.

Q. You run a service motor? A. Yes.

Q. You have been on the ore train, I suppose?

A. Yes, sir.

Mr. HELLENTHAL.—That is all. [692]

#### Cross-examination.

(By Mr. RODEN.)

Q. Where were you at the time of the slide?

A. Right at the top of the hill.

(Testimony of Charles Bland.)

Q. At the tipple?

A. No, halfway between the tipple and the No. 3 tunnel.

Q. That would be a matter of about 2 minutes, would it? A. From No. 3 to where I was?

Q. Yes. A. About that—it wouldn't be that.

Mr. RODEN.—That is all.

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. What do you mean—that it would take you and your motor about two minutes to run from No. 3 tunnel to where you were?

A. No, it wouldn't take a minute.

Q. With the motor? A. No, sir.

Q. With your service motor? A. No, sir.

Q. With an ore train it would take a little longer?

A. Take a little longer than that.

Mr. HELLENTHAL.—That is all.

Recross-examination.

(By Mr. RODEN.)

Q. Were you running a motor or train at that time?

A. At that time I wasn't running nothing—I was standing still.

Q. When you moved did you move on a train or a motor? A. I was on a motor.

Mr. RODEN.—All right—that is all.

(Witness excused.) [693]

**Testimony of Wert Newman, for Defendant.**

WERT NEWMAN, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

**Direct Examination.**

(By Mr. HELLENTHAL.)

Q. Mr. Newman, where were you employed on January 2d, 1920? A. Alaska Juneau.

Q. In what department?

A. Electrical department.

Q. On that morning where were you during the early part of the forenoon?

A. Up at the Jualpa substation.

Q. That would be in the Jualpa Basin?

A. Yes, sir; there and the shop together.

Q. What did you do in the forenoon in the way of starting down towards town?

A. We had an electrical disturbance in the substation around 9:30—we had a disturbance before that—the compressor man calls me down there, that there is something wrong with the high line and told me to come down to the compressor; so when I went down to the compressor—that is the compressor in the substation—the lights was flickering; they would go down low and then they would come back up again, and the telephone bell was ringing—the juice was leaking through the high line, was what I thought it was, and was causing the bell on the telephone to ring.

(Testimony of Wert Newman.)

Q. Everything was out of gear?

A. Everything was out of gear—you couldn't get the power-house to find out anything.

Q. That was between 9 and 10 o'clock in the morning? A. Yes, sir.

Q. After that what did you do in the way of going down towards town? [694]

A. I started down over the line—it was just before 10 o'clock.

Q. Who sent for you to go over the line?

A. Earl Higgins.

Q. He is the chief electrician? A. Yes, sir.

Q. What line did you go over?

A. Over the Alaska Juneau transmission line.

Q. That is the line running from the Basin to the power-house on the Juneau beach?

A. Yes, sir.

Q. On your way downtown did you pass the place where the slide afterwards occurred? A. Yes, sir.

Q. Just before you got to the slide, or before you reached the slide, did you see any flashes?

A. No, sir.

Q. Now, just before you got to the slide what kind of country did you go through with reference to whether you could see flashes on the hillside ahead of you?

A. Well, a flash could occur ahead of you and you wouldn't see it—you would go down in ravines and back out of them.

Q. And there was brush on the ground, too?

(Testimony of Wert Newman.)

A. Not so much brush—stumps and logs, and draws to go into.

Q. There is a little space, though, just before you get to the slide where you would see them, isn't there? A. Yes, sir.

Q. Did you see any when you were passing through that space? A. No, sir.

Q. As you went through that space did you look up in the direction of the trommel screen?

A. Yes, sir.

Q. What did you see at the trommel screen?

A. There was some water coming out of the trommel screen. [695]

Q. How much water was coming out of there?

A. I wasn't looking straight into the stream—I wasn't looking into it—I was quartering the stream from where I was.

Q. Can you give me an idea whether there was much water coming or little water coming?

A. From where I was looking at the stream, the stream looked round—it looked to me like it was about 4 inches, or the same size as my leg is, is about the size the stream would look.

Q. How would the stream that came from there come through a 12-inch box?

A. A 12-inch box, I think, would carry more water than was coming through there.

Q. It would carry more water, wouldn't it?

A. Yes, sir.

Q. A good deal more?

A. I think a 4-inch pipe hitting down from the

(Testimony of Wert Newman.)

trommel screen would carry all the water that was coming through there.

Q. And a 12-inch box on that same level would carry all the water that was coming through there?

A. Yes, sir.

Q. And would carry a great deal more.

A. Yes, sir.

Q. Then where did you go—did you continue on your way examining the power line?

A. Yes, into the power-house.

Q. Did you cross over the slide area?

A. Yes, sir.

Q. As you crossed over the slide area was there any water running down over the surface of the ground?

A. No, sir, nor more than there was anywhere else on the hillside.

Q. Was the ground just the same as the ground you passed between the—

A. Not any more water at this place than you would find anywhere [696] else on the hillside because there was water everywhere.

Q. Was there any stream of water coming down over that hog-back at all?

A. No, sir—well, I didn't go over the apex of the slide—I followed right where the pole line goes there.

Q. I mean along the line that you went?

A. Yes, sir.

A. You followed the pole line? A. Yes, sir.

Q. That is the Alaska Juneau pole line?

(Testimony of Wert Newman.)

A. As near as I could.

Q. And that would take you across the slide area along the line that I am now marking with my pointer?

A. I might be 5 or 6 feet below that line or above it, if the trail is on the other side of it—whichever side the best walking was I would be on that side of the trail.

Q. And that power line leads along just below the word "slide" as it appears on this map?

A. Yes, sir—down below it, yes, sir.

Q. And that is the place where you crossed at that time? A. Yes, sir.

Q. And you say there was no surface water running over that place?

A. Not any more than there was anywhere else on the hillside.

Q. What I mean is there was no stream of water?

A. No, sir.

Q. The surface was no different—

A. The surface was just about the same thing—the sloughs were full of water. I had got my feet wet before I got to there—I got my feet wet before I got out of the Basin in Gold Creek—I got wet up there when I first started out and I didn't pay any attention to it after that.

Q. When you speak of sloughs you mean gulches where the water would come down?

A. Where the gulches would come down this way.

[697]

Q. Between those two gulches there was no

(Testimony of Wert Newman.)  
water running over the surface?

A. No more than anywhere else.

Q. The surface conditions were the same as they were anywhere else?

A. As far as I saw them,—all over the surface it was the same.

Q. What do you do when you examine the line?

A. When I come to a tower I would go where I could see where the high line was tied to the insulator, and I would look to the end of the tower—look to the next tower—you can see through your lines right ahead—to see whether it cleared into the next tower or not, and then I would pay no more attention to the line until I would get to the next tower.

Q. And then you would do the same thing from there to the next tower?

A. Yes, do the same thing.

Q. And you followed the line down that morning that way? A. Yes, sir.

Q. Did you find anything wrong with the line?

A. No, sir; I reported in the power-house when I got to the power-house that the line was clear—I found nothing on it.

Q. Did you examine the Gastineau line while you were going along? A. No, sir.

Q. You don't know what condition it was in?

A. No, sir.

Q. You went right down to the power-house then?

A. Yes, sir; the same as any other line—as soon as we examine a tower we look through to the next

'(Testimony of Wert Newman.)

tower, and would go to the power-house and examine it.

Q. When you got to the power-house did you see Earl Higgins there?

A. He wasn't there when I got there.

Q. How long after you got there did Earl Higgins come in? A. That is pretty hard to say.

[698]

Q. Ten or fifteen minutes, or something like that?

A. I would judge 10 minutes—12 minutes—something like that—10 or 15 minutes.

Q. After you met Earl Higgins there where did you and Earl go, if anywhere?

A. Well, I told him the line was clear and I was going back up to the Basin where I work. Well, he said he was going up—he says, "Come on, we will go up here and up where the slide was."

Q. Where did you go?

A. We went down the street to the first street leading down this side of the General Hospital—we went around that street, went around the administration building and followed up by this slide area.

Q. Now, when you went up there, Mr. Newman, did you see any water coming over the snowsheds?

A. Yes, sir.

Q. How much water was there coming over there?

A. There was quite a bit of water coming over the snowsheds.

Q. Was there enough water so it would fall down on the water flume and spout off of that in a sheet?

(Testimony of Wert Newman.)

A. Yes, sir; when it would strike this flume it would kind of bust the stream and it would throw out kind of a wide looking spread.

Q. How would it look to anyone who didn't know the situation up there as to where the water was coming from?

A. It looked as though it was coming from the flume.

Q. And you observed that that morning as you went up the hill? A. Yes, sir.

Q. After you got to the trommel screen house did you look around where the spout was to see whether there was any evidence of running water on the ground?

A. No more than leaves and grass and stuff there.

Q. You could see that water had been running?

[699] A. Yes, sir.

Q. Was there any cut in the ground?

A. No, sir; none that you could notice.

Mr. HELLENTHAL.—You may cross-examine.

#### Cross-examination.

(By Mr. RODEN.)

Q. Where were you at the time of the slide?

A. I don't know—I don't know what time the slide come in.

Mr. HELLENTHAL.—There is just one question I want to ask the witness. Mr. Newman, after you passed the slide area going towards the power-house your back was turned towards where the slide happened? A. Yes, sir.

Q. (By Mr. HELLENTHAL.) And you didn't

(Testimony of Wert Newman.)

notice anything more about it? A. No, sir.

Q. (By Mr. RODEN.) Well, about what time was it that you went up with Earl Higgins, up to the trommel screen?

A. Got to that trommel screen—if I remember right it was 10 minutes to twelve o'clock.

Q. As near as you know now, you must have been somewhere between the slide area and the powerhouse when the slide happened?

A. Well, I could have been right there somewhere or other—I don't know just where I could have been at that time.

Q. How long did you stay up around the trommel screen there, Mr. Newman?

A. Oh, probably three minutes.

Q. And the snowshed water was running?

A. Yes, sir.

Q. In good shape? A. Yes, sir.

Q. And did that quit running about half an hour after you were up there? [700]

A. I don't know anything about it—I went right through into the Basin.

Q. Do you know whether or not the Alaska Juneau could shut that off?

A. They have got no way to shut it off—not the surface water coming over the mountains.

Q. How long did you see the water running out of this trommel screen coming down?

A. What is the question?

Q. For how long a period of time did you see this water coming out of the trommel screen after

(Testimony of Wert Newman.)

you got up to the trommel screen?

A. There wasn't any running out of there when I got up there.

Q. Where was the water going to then?

A. There was none running out of the screen when I went up to it.

Q. Was there any in the ditch and flume?

A. I don't know whether there was or not—I wasn't attending to the ditch.

Q. I know you weren't—anyway you didn't see any water. You were up there for say three or four minutes at about 10 minutes to twelve and you saw no water running out of the trommel screen then? A. No, sir.

Q. About how long before you went up to the trommel screen had you seen this water coming out of the spout?

A. I couldn't judge—I couldn't tell you.

Q. You can give us an idea?

A. A little after eleven o'clock, then.

Q. A little after eleven? A. Yes, sir.

Mr. RODEN.—That is all.

(Witness excused.)

(Whereupon court adjourned until 10 o'clock of the following morning.) [701]

## MORNING SESSION.

April 1, 1921, 10 A. M.

## Testimony of Robert E. Murphy, for Defendant.

ROBERT E. MURPHY, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

## Direct Examination.

(By Mr. HELLENTHAL.)

Q. State your name? A. Robert E. Murphy.

Q. Where do you live, Mr. Murphy?

A. Gastineau Hotel.

Q. In Juneau? A. Juneau.

Q. Were you residing here at the time of the slide on the 2d of January, 1920? A. I was.

Q. And for some time after that? A. Yes, sir.

Q. Where was your office at that time?

A. In the Pond building.

Q. Where is that situated in Juneau, on Front Street? A. On Front Street.

Q. Where is it with reference to the place where the slide occurred?

A. It is about half a block below where the slide came down.

Q. Half a block further down channel?

A. Further down the channel, yes.

Q. At the time of the slide you were up town, weren't you?

A. I was just about in front of Behrend's bank.

Q. You didn't see the slide?

(Testimony of Robert E. Murphy.)

A. I didn't see the slide, no.

Q. After the slide, in the afternoon of that same day,—do you know now where the snowsheds are at the bend of the flume there—the Alaska Juneau flume line? [702] A. I do.

Q. Where the flume used to be,—it has been taken away since, but where the flume used to be right under the snowsheds? A. Yes.

Q. In the afternoon of the day of the slide what, if anything, did you see in the way of water coming from that place?

A. There was quite a bit of water coming over the snowsheds.

Q. How did it look to you, that water?

Mr. RODEN.—We object to the question—it refers to matters after the slide, and considerably after the slide.

The COURT.—The object, I suppose, is simply to show that water coming over that snowshed looks like water coming out of the flume.

Mr. RODEN.—If that is the only point, all right.

Mr. HELLENTHAL.—That is the only point, your Honor.

Q. At that time, Mr. Murphy, how did that water appear to you—where did it appear to be coming from?

A. I thought it was coming from the flume.

Q. Did you see it on the next day and for several days after that in the same place?

A. Yes, I saw it for three or four days after that.

Q. How long did you continue in the belief that

(Testimony of Robert E. Murphy.)

that water was coming from the flume?

A. It was some day the next week following the slide.

Q. Then what happened?

A. Tom McDonald came in the office and asked me—

Mr. RODEN.—Wait a minute.

Mr. HELLENTHAL.—It would not be incompetent to state what Tom McDonald said.

The COURT.—Mr. Hellenthal, if that is the matter you want to develop it seems to me that you can develop it in two or three questions.

Mr. HELLENTHAL.—I have a very important matter that I want to make plain. [703]

Q. At that time, a few days after the slide, did any one direct your attention,—did you talk that matter over with anybody? A. I did.

Q. Where did that person claim the water came from?

A. He claimed it was surface water coming over the snowsheds.

Q. Then what did you do?

A. That afternoon I walked up there to see for myself.

Q. At that time did you satisfy yourself where that water came from?

A. It was all surface water coming over the snowsheds.

Q. And dropping over on to the flume and spouting out? A. Yes, sir.

Q. At that time you were of the honest opinion that that was water coming from the flume?

(Testimony of Robert E. Murphy.)

A. I was.

Q. And that is the way it appeared to you?

A. Yes.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Mr. RODEN.)

Q. You couldn't see the snowsheds from your office, could you? A. I could.

Q. You couldn't see the flume that was underneath them?

A. That distance is almost a quarter of a mile in a straight line from the office, and are almost directly under it—it was a very sharp angle, and it was an easy thing to confuse it.

Q. It is a quarter of a mile from your office—that is down where the Dupont office is, isn't it?

A. Dupont office, yes, sir, and I should judge it is a quarter of a mile in a straight line.

Q. This is the place, isn't it, Mr. Murphy?

A. Yes, sir; it is on the mill side—that is about the place.

Q. And your office is about here?

A. It is right straight down. [704]

Q. And you couldn't tell whether the water was coming from the snowsheds up here or whether it was coming over the flume?

A. That is the way it looked to me. I knew there was a flume there and I took it for granted it was coming from the flume.

Mr. RODEN.—Certainly you took it for granted. That is all.

(Testimony of Robert E. Murphy.)

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. How did the water come—did it flow towards you or away from you?

A. Where,—when I was standing on the street you mean?

Q. Yes, on the street.

A. It was coming right straight down towards me.

Q. A drop of about how much.

A. It was a sheet of water—I would estimate it probably 4 or 5 feet wide.

Q. How far did it drop down, Mr. Murphy, before it hit the ground,—can you tell that approximately?

A. I couldn't estimate that.

Q. It would be quite a little drop anyway?

A. There was quite a little drop there, I think.

Mr. HELLENTHAL.—That is all.

Recross-examination.

(By Mr. RODEN.)

Q. Well, you know where the penstock was located up there?

A. That was on the other side of the building?

Q. Yes. A. Yes, sir.

Q. On this map or plat, here is the penstock, here are the snowsheds, do you think you could be mistaken as to whether or not the water was coming over the snowsheds or whether it was coming out of the penstock?

A. No, sir; when I looked I didn't notice the penstock at all; [705] I saw the water coming over

(Testimony of Gudman Jensen.)

the snowshed, and I heard the flume overflowed and that is where I considered the water was coming from.

Mr. RODEN.—That is all.

(Witness excused.)

**Testimony of Gudman Jensen, for Defendant.**

GUDMAN JENSEN, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. State your name. A. Gudman Jensen.

Q. Where do you live? A. Juneau.

Q. You have lived here a good many years?

A. Yes, sir.

Q. Do you know where the snowsheds of the Alaska Juneau Company are in Portal Gulch?

A. Yes, sir.

Q. Did you within a day or so,—you remember when this slide took place? A. Yes, sir.

Q. Within a day or so after the slide did you observe water coming over those sheds?

A. Yes, sir.

Q. Where were you standing at the time?

A. I was standing right in front of that little machine-shop just below the foundry.

Q. On Front Street? A. Yes, sir.

Q. Who was with you? [706]

A. Emil Thompson.

(Testimony of Gudman Jensen.)

Q. Is that the same Emil Thompson who is a witness in this case? A. Yes, sir.

Q. At that time did you observe any water coming over those snowsheds over the flume?

A. Yes, sir.

Q. Where did that water appear to be coming from, from where you stood?

A. Well, it come over the snowsheds as you say, and looked like there was some kind of—well, it was spreading out right on top of the flume there.

Q. How did it look to you as to what was there,—how did it look to you,—did it look to you as if there was any spout there or anything of that kind?

A. I couldn't tell exactly—it shot right out there.

Q. Did it have the appearance of overflow?

A. Over that culvert, or something of that kind.

Q. At that time where did you think the water was coming from—from the flume or elsewhere?

A. At that time?

Q. Yes, at that time?

A. Well, I didn't know—he said there was a flume overflowing.

Q. Did Thompson at that time draw your attention to this water? A. Yes.

Q. And what did he say to you at that time as to what was the water that caused the slide, if anything?

A. He said that was the water that caused the slide.

Q. He said that was the water that caused the slide? A. Yes, sir.

(Testimony of Gudman Jensen.)

Q. And he pointed to this water flowing over the snowsheds? A. Yes, sir.

Q. At that time did you have any talk with Thompson about the matter?

A. Yes; he argued that that water must have caused the slide because [707] it couldn't come down out of the gulch.

Q. It couldn't get to the slide area?

A. Couldn't get that far up.

Q. What view did Thompson express?

A. He said he was up there and saw it and that was the water that came on down over the slide.

The COURT.—Mr. Roden, if you are not going to object to this testimony I am. I cannot waste too much time on this case.

Mr. RODEN.—I have tried to object many times, but counsel always makes it a life history.

Mr. HELLENTHAL.—Your Honor did not understand my purpose in this testimony.

The COURT.—You are going into a conversation between this witness and Thompson.

Mr. HELLENTHAL.—Thompson was a witness here and testified that he saw water at that time coming from the penstock—this witness said that he saw the water coming from the snowshed—

The COURT.—If you want to impeach Mr. Thompson you should have laid the foundation.

Q. (By Mr. HELLENTHAL.) You afterwards learned where that water really came from?

A. Yes, sir.

Q. It came from the snowsheds and not from the flume? A. Yes.

(Testimony of Gudman Jensen.)

Mr. HELLENTHAL.—That is all.

Cross-examination.

(By Mr. RODEN.)

Q. All that happened after the slide had happened? A. Yes, two or three days after.

Mr. RODEN.—That is all.

(Witness excused.) [708]

#### Testimony of W. W. Casey, for Defendant.

W. W. CASEY, a witness called on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. State your name. A. W. W. Casey.

Q. Where do you live? A. Juneau.

Q. You have lived in Juneau for a good many years? A. Yes, sir.

Q. Were you in Juneau at the time of the slide, on January 2, 1920? A. Yes, sir.

Q. Shortly after the slide happened did you go down to the place where it had happened?

A. Yes, sir.

Q. About how long afterwards, Mr. Casey?

A. Oh, I presume it took me ten or fifteen minutes to get down there. I was notified what it was. I heard the bell ring and I went out on the street, and a fellow came along and I said, "What's doing?" He said, "There is a slide down at Izzy Goldstein's," and I trotted down there.

(Testimony of W. W. Casey.)

Q. It was some time after the slide when you got down there? A. Yes, sir.

Q. Do you know where the Alaska Juneau penstock was, above the slide?

A. Yes, I have seen the penstock.

Q. Do you know where that horseshoe is in the draw—in Portal Gulch, where the water comes over the shed? A. I have seen that from the street.

Q. Now, Mr. Casey, after you got there what, if anything, did you see in the way of water coming from the penstock?

A. There was water running from the penstock when I arrived there.

Q. In what direction was that spouting, from where you stood? [709]

A. The penstock ran, partly at least, at right angles to me.

Q. You were looking into the thickness of the spout, or into the width of it—could you tell how wide the stream was that came from the penstock?

A. No, sir.

Q. Could you tell whether it was 2 inches, 4 inches, or 2 feet?

A. No, I couldn't testify to it—I could see some water coming out of there,—it was coming in this direction.

Q. What part of it were you looking into,—into the edge of it or into the face of it?

A. The edge of it.

Q. You couldn't see the thickness of it from where you stood? A. No, sir.

(Testimony of W. W. Casey.)

Q. How far did it fall before it hit the ground?

A. I didn't pay any attention—I suppose five or six feet—maybe eight feet—maybe four—I don't know—I couldn't say—it was something below the flume.

Q. Did you at that time see water coming from this horseshoe, at the place where the water spills over the snowshed? A. Yes, sir.

Q. How much water was coming over there—a large volume?

A. I would say five, six or seven feet wide—somewhere along there.

Q. Quite a spread of water? A. Yes, sir.

Q. How did that look, from where you stood, as to where that water came from?

A. I could see it running down there—I saw the water, but I was more interested in getting a ladder and getting some fellows that were behind the houses out.

Q. About all you remember now is that you saw the water coming over the snowshed? A. Yes.

Q. Did that come towards you or did you look into the edge of that? [710]

A. It was pretty nearly straight up from where I stood. I was in front of the slide, down below those cabins.

Q. That flowed down towards Front Street?

A. I went down towards Jim Connor's to see if I could find a ladder.

Q. It flowed towards Front Street?

A. Yes; I know going along there I seen that water.

(Testimony of Lloyd V. Winter.)

Q. But some time after the slide, that afternoon, maybe, or during that day anyway, did you observe any water coming from this chute at the place where the flume bends and goes over into Portal Gulch?

A. There was water coming down there.

Q. Did you see it on that day and the days following? A. Yes, sir.

Q. From where you were on Front Street where did that water appear to be coming from?

A. I made the remark that the flume or penstock or something up there was overflowing. [713]

Q. And that was the flow that you saw the day after the slide and for a few days after that—several days after that? A. Yes, sir.

Q. How long did you continue in the belief that that water came from the flume?

A. I think the second day I was called by Mr. Pond and we went up on the hillside to make photographs.

Q. When you went up on the hillside to make the photographs you saw it was coming from where?

A. We were making the pictures for commercial purposes and when I got up where this flume or penstock arrangement is I then saw the water was coming over the top and not over the penstock—flowing over the top.

Q. That place over there is the flume, isn't it, Mr. Winter,—the flume where you saw the water in the gulch, or the penstock, are not located there?

A. No, the penstock was this side.

Q. It wasn't at the place where the penstock really was that you saw the flow? A. No.

(Testimony of Lloyd V. Winter.)

Q. It was at a place further down channel?

A. Yes.

Q. Than where the flume comes out of the tunnel?

A. The view I had from my place I couldn't see the end. I believe there is a photograph that we took showing the overflow of the water that looked like the end of the tunnel.

Q. Did you ever see water coming from the penstock itself? A. I think not, no.

Q. Is that the picture, Mr. Winter? A. Yes.

Q. Is that the place where you saw the water running? A. Yes, sir.

Q. And that is the only place you saw it?

A. Yes. [714]

Q. That is Defendant's Exhibit No. 3. I now direct your attention to a photograph and ask you state whether you took that picture? A. Yes, sir.

Q. When did you take it?

A. On the 3d day of March.

Q. On the 3d day of March of this year?

A. Yes, sir.

Q. Where was that picture taken and what does it show?

A. It was taken on the upper part of the big slide.

Q. On the upper part of where the slide happened? A. Yes, sir.

Q. What is shown in that picture—what was the purpose of taking it?

A. Water coming from under the ground like springs.

(Testimony of Lloyd V. Winter.)

Q. Does that water show in that picture, Mr. Winter? A. Yes, sir.

Q. Can you point to the jury where it shows?

A. This water—this dark condition in here isn't the same—it is almost.

Mr. HELLENTHAL.—I will offer that picture in evidence.

Q. (By Mr. HELLENTHAL.) At that time how many springs did you find in the upper end of the slide? A. I think there were three.

Q. You think there were three? A. Yes, sir.

Q. This one is one of the largest, Mr. Winter?

A. Yes, sir.

Q. The others were smaller? A. Yes.

Q. But they were still running water? A. Yes.

Mr. RODEN.—No objection to that picture.

[715]

(Whereupon said picture was received in evidence and marked Defendant's Exhibit No. 10.)

Mr. HELLENTHAL.—That is all.

Mr. RODEN.—No questions.

(Witness excused.)

#### **Testimony of T. B. Judson, for Defendant.**

T. B. JUDSON, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

#### **Direct Examination.**

(By Mr. HELLENTHAL.)

Q. State your name. A. T. B. Judson.

(Testimony of T. B. Judson.)

Q. Where do you live? A. Juneau.

Q. Where are you employed?

A. Alaska Juneau Gold Mining Company.

Q. Are you employed in the mill? A. Yes, sir.

Q. Were you employed there at the time the slide happened? A. Yes, sir.

Q. Do you remember what happened in the mill shortly after eleven o'clock of that forenoon with reference to power conditions? A. Yes, sir.

Q. What happened? A. The power kicked out.

Q. When the power kicked out what went out first? A. Some of the ball mills.

Q. The motors went out? A. Yes, sir.

Q. Did the lights go out at the same time the motors went out?

A. No, sir; they were lit a short time after that.

[716]

Q. They were burning for a short time after that and then they went out, is that right?

A. Yes, sir.

Q. Now, Mr. Judson, do you know where this crack is appearing below the City dock in the hillside?

A. Yes, sir; I think I discovered it.

Q. When did you discover it?

A. It was the day the "Alameda" went west—I think it was last Monday.

Q. At that time how wide was it?

Mr. RODEN.—We object to anything that he discovered last Monday—that has no bearing upon this case at all—it opens up a whole new field.

Mr. HELLENTHAL.—I want to ask one or two

(Testimony of T. B. Judson.)

questions, to show the progressive movement of the earth bodies—that is all I want to ask him—that and how wide it was on a subsequent date—that is all.

The COURT.—Very well, you may ask him that question.

Q. How wide was it, Mr. Judson, at the time when you first saw it?

A. At that time it was very narrow. I didn't tell anybody anything about it because I didn't think it was anything very serious.

Q. When did you see it next?

A. I think it was night before last, Mr. Clauson and I were talking.

Q. What did you see night before last?

A. He and I went there and looked at it.

Q. Was it wider?

A. Yes, sir; it was 2 feet wide in some places—we traced it.

Mr. HELLENTHAL.—You may cross-examine.

#### Cross-examination.

(By Mr. RODEN.)

Q. That crack you saw up there last night, that is in a great big waste pile?

A. I don't think so. [717]

Q. Can't you see it now—here is the waste pile and here is the crack?

A. I didn't look at it that far over.

Q. You didn't go close to the waste pile, did you?

A. I traced it over as far as the creek and it seemed to turn down the hill.

(Testimony of T. B. Judson.)

Q. The crack is running right into the edge now, isn't it, of that waste pile?

A. I haven't been over there since night before last.

Q. It was running there then, wasn't it?

A. It wasn't running in it then, I don't think, at that time—not to my observation.

Q. This is the waste pile—how close to the waste pile did you see this crack?

A. Right to the side of the creek.

Q. How close to the waste pile?

A. I think the creek describes the waste pile; at that point, where the crack is I think it is 15 to 20 feet from the waste pile, or more.

Q. You don't know now whether the crack runs into the waste pile or not? A. I do not.

Q. And you didn't notice any water coming down this hill and running into the crack and under the waste pile?

A. I think the water stays on top of the ground—it did when I looked at it.

Q. And then the crack extends along the hill for some distance, doesn't it? A. Yes.

Q. Then what does it do?

A. I haven't traced it out—I just called the attention of Mr. Clauson to it.

Q. You didn't trace it out at all?

A. It isn't my business to trace it out—I just pointed it out. [718]

Q. Is it very easily seen?

A. When I discovered it it was right near the

(Testimony of T. B. Judson.)

Gastineau pole—I saw where the rocks had run over from the Gastineau pole—and I thought the rocks were settling at that time.

Q. Doesn't the crack run straight down the hill towards the waterfront?

A. I didn't trace it down. I took Mr. Clauson over there and showed it to him, and he went, I think, to Mr. Hargraves about it—that is his part of the work.

Q. Doesn't it appear to you that the weight of this rock pile is the very cause of smashing this ground down—weighing it down?

A. I haven't given it any thought.

Q. You cannot figure out any crack coming down this way, can you?

A. Yes; the whole hill couldn't break without a crack somewhere.

Q. Wouldn't it crack along the plane of the hill—practically parallel with the hill?

A. It would have to break down somewhere.

Q. In other words if you look at this diagram here, you have got a mountain-side here—here is the mountain-side—now this crack runs this way, and here is the waste pile—how do you explain this crack running up and down the hill?

A. I don't get you with reference to where I saw the crack. It started by the corner of that chicken fence and went over towards the waste pile—as far as the extent of the crack now, I would have to look at it and go over it, I guess.

Q. As a matter of fact, you haven't examined

(Testimony of John H. King.)

that crack down there very carefully, have you?

A. No, sir; I just reported it to Mr. Clauson.

Mr. RODEN.—That is all.

(Witness excused.) [719]

**Testimony of John H. King, for Defendant.**

JOHN H. KING, called as a witness for the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Your name is John H. King? A. Yes, sir.

Q. Were you working in the Alaska Juneau mill at the time the slide occurred on January 2, 1920?

A. Yes, sir.

Q. Shortly after eleven o'clock what, if anything, happened in the mill to the power?

A. The machinery all stopped.

Q. Did the lights go out at the same time that the machinery stopped? A. No, sir.

Q. The lights stayed on? A. Yes, sir.

Q. How long after the machinery stopped did the lights go out?

A. Just about that—I couldn't tell but I should judge it would be at least 5 minutes.

Q. Some short period like that—5 or 10 minutes would you say? A. Yes, sir.

Q. Then the lights also went out? A. Yes, sir.

Q. And everything went out? A. Yes, sir.

Mr. HELLENTHAL.—You may cross-examine.

(Testimony of John H. King.)

Cross-examination.

(By Mr. RODEN.)

Q. The whole plant went out of commission, is that the idea?

A. I presume it did. You see I was way on the bottom floor and the machinery in my room stopped, and I presume the machinery [720] everywhere else stopped, because when I came out everything was dead.

Q. Everything was dead? A. Yes, sir.

Q. From the crushers to the retreating plant?

A. Yes, sir.

Q. How long did that continue?

A. That it was shut down?

Q. Yes.

A. I think it was somewhere along about half-past one or two o'clock in the afternoon—I believe so—when we started up,—I ain't sure of it, though.

Q. It continued for an hour or so, anyhow?

A. Yes, sir.

Mr. RODEN.—That is all.

(Witness excused.)

**Testimony of Ed. Crowell, for Defendant.**

ED. CROWELL, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. State your name. A. Ed. Crowell.

(Testimony of Ed Crowell.)

Q. At the time this slide occurred on January 2, 1920, where were you working?

A. At the stamp mill.

Q. You were working in the stamp mill?

A. Yes, sir.

Q. For the Alaska Juneau Company?

A. Yes, sir.

Q. The stamp mill is the small mill this side of the big ball [721] mill, isn't it? A. Yes, sir.

Q. That is the mill you were in? A. Yes, sir.

Q. You were not in the new mill—the big mill?

A. No.

Q. But in the stamp mill? A. Yes.

Q. The 50-stamp mill marked on the plat?

A. Yes.

Q. Do you remember what happened shortly after 11 o'clock in the stamp mill with reference to the power?

A. The power went off and everything shut down.

Q. Did the lights go out at the same time the power went off?

A. Yes, the lights went out at the same time the power went off.

Q. The power went off and the lights went out all at the same time? A. Yes.

Mr. HELLENTHAL.—You may cross-examine.

Mr. RODEN.—No questions.

(Witness excused.) [722]

**Testimony of James E. Higgins, for Defendant.**

JAMES E. HIGGINS, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

**Direct Examination.**

(By Mr. HELLENTHAL.)

Q. You may state your name.

A. James E. Higgins.

Q. Where do you live, Mr. Higgins?

A. Juneau.

Q. What is your profession? A. Electrician.

Q. Where are you employed?

A. By the Alaska Juneau Gold Mining Company.

Q. What position do you hold with them?

A. Chief electrician.

Q. Did you occupy that position at the time the slide occurred on January 2d, 1920? A. I did.

Q. And for some time prior to that time?

A. Yes, sir.

Q. Are you familiar with the trommel screen, a model of which has been introduced in evidence here? A. Yes, sir.

Q. Do you remember the occasion of its installation? A. Yes, sir.

Q. About how long ago was it when that screen was installed? A. It was installed in April, 1918.

Q. At that time did you install a motor to drive it? A. Yes, sir.

Q. What size motor did you install?

(Testimony of James E. Higgins.)

A. Three horse-power motor.

Q. What kind of a motor was it?

A. A 3 phase motor running on a single phase circuit. [723]

Q. Before I proceed on that investigation I want to ask you a question or two about the power conditions. Where does the Alaska Juneau get its power from?

A. From the Sheep Creek power plant located below Thane a little bit; from the Nugget Creek power plant located at the Mendenhall Glacier; from the 240 generating station over at Treadwell, and get some power from the Gastineau Mining Company; we also have a steam plant down here at the Alaska Juneau.

Q. Now, the power that comes from these various generating plants, where, if at all, is that concentrated?

A. The feeders all come into the bust bars down at the power plant.

Q. All this power from the various sources comes on to the bust bars at the power plant, is that right?

A. We are connected up with all these different power plants so we can use all the power we require.

Q. And that power is brought down to the bust bars of the Alaska Juneau in one place?

A. Yes, sir.

Q. I wish you would explain what is meant by the bust bars.

(Testimony of James E. Higgins.)

The COURT.—Aren't you going into a good deal of unnecessary detail?

Mr. HELLENTHAL.—Not any more than is just necessary to get the idea before the jury. I want the jury to know how these electrical connections are made so that they will understand the effect of the slide upon them.

The COURT.—Your whole object, of course,—I know from the other case,—is to show how an interruption in one part of the power interrupts another part and how one is dependent upon the other. The fact that the motor stopped, what would that indicate,—you can just ask those questions and let Mr. Roden bring out all the rest on cross-examination.

Mr. HELLENTHAL.—I know, but I can do it in 1/10th of the time [724] that he can on cross-examination, and to my mind it ought to be made clear to the jury, and I want the jury to know.

The COURT.—You want them to know the ultimate fact?

Mr. HELLENTHAL.—I want them to know enough detail so that they can see the ultimate fact, that is all.

Q. (By Mr. HELLENTHAL.) Anyhow, the power comes in on the bust bars? A. Yes, sir.

Q. And they are situated in the Alaska Juneau power plant? A. Yes, sir.

Q. How does the power get from there, from the bust bars, to the various places of use?

A. It is tapped off the bust bars at intervals

'(Testimony of James E. Higgins.)

upon the switch board, connected to the different feeders that feed the different units of the mill.

Q. There are a number of feeders or circuits—there are several circuits, are there not?

A. Yes, sir.

Q. And they start from the bust bars and go to the mill to supply current to various machines in the mill? A. Yes, sir.

Q. How many of these feeders were there approximately?

A. There are seven running up to the mill.

Q. And there is also one running up the hill—the direct current, isn't there? A. Yes, sir.

Q. That would be eight in all?

A. That would be eight.

Q. Now, on which one of those feeders is the trommel screen motor?

A. That was connected to No. 15 feeder.

Q. On what feeder are the lights in the tunnel at the point where the two tunnels meet, marked "Lights" on Exhibit No. 2?

A. That is connected to No. 15 feeder also.

Q. The same feeder? A. Yes, sir. [725]

Q. On what feeder is the stamp mill?

A. That is connected to No. 15 feeder.

Q. That same feeder supplies the stamp mill, the trommel screen motor and the lights in the tunnel?

A. Yes, sir.

Q. Now, your motors, have they any protection in the way of fuses or circuit-breakers?

A. On the small load voltage motors we have

(Testimony of James E. Higgins.)  
them protected by cartridge fuses.

Q. How do you protect the large motors?

A. The larger higher voltage motors in the mill are protected by instantaneous circuit-breakers.

Q. Those are a mechanical device intended for large motors? A. Yes, sir.

Q. And the other device operates practically the same way for small motors?

A. They operate to the same point only they are not so elaborate an installation.

Q. Now, in the event that a short circuit comes over the line it is liable to kick out any of these circuit-breakers and stop the motors, is that right?

A. Yes, sir.

Q. Now, at the power plant where these feeders leave the bus bars, what have you there?

A. We have what is known as a time limit relay that is designed to carry a certain per cent overload for a certain length of time. The idea of that is to enable us to start motors up in the mill without kicking out the circuit. When we have other motors running on the same circuit we can shut down one motor and start up another without running so much chance of kicking out the power in the power-house and kicking out the motors on that circuit.

Q. And each circuit is connected with one of these circuit-breakers? A. Yes, sir. [726]

Q. No. 15 circuit along with the others?

A. Yes, sir.

Q. If No. 15 circuit should kick out at any time

(Testimony of James E. Higgins.)

what would be the effect on the motor at the trommel screen,—that is to say, if that time relay circuit-breaker situated in the power-house should go out, how would that effect the motor at the trommel screen?

A. That would stop it—have no power to run it.

Q. How would that affect the lights in the tunnel at the point marked "lights" on the map?

A. They would go out.

Q. How would it affect the stamp mill?

A. That would stop also.

Q. Everything in the stamp mill would stop?

A. Yes, sir.

Q. Including the lights? A. Yes, sir.

Q. The lights would go off? A. Yes, sir.

Q. And everything on that circuit would be dead?

A. Yes, sir.

Q. Out of commission. All right. Now, in the ball mill could the motors kick out and leave the lights on? A. Yes.

Q. If a short circuit came in it might kick out the motors and leave the lights burning? A. Yes.

Q. What would that indicate with reference to that circuit?

A. It would indicate that there was a disturbance on that circuit sufficient to kick the motors out but not sufficient to kick the time relays out in the power-house.

Q. It would indicate that there would still be power on that circuit? A. Yes. [727]

(Testimony of James E. Higgins.)

Q. If the lights were on, but if the lights were off what would it indicate?

A. It would indicate that that circuit was out.

Q. It would indicate that that circuit was out along with the rest of them? A. Yes, sir.

Q. There might be power on the circuit and yet be no power on No. 15; is that right? A. Yes.

Q. If the circuit-breaker on No. 15 should kick out and the circuit-breaker on No. 17—that is No. 17 that supplies the mill, isn't it?

A. 17 supplies the mill lights.

Q. And if 17 remained in the lights in the big mill would remain on after the circuit-breaker on No. 15 was kicked out? A. Yes, sir.

Q. Where does the train get its power from?

A. The train gets its power from a rotary converter. There is one of them located in the power plant and one of them located in the Jualpa substation.

Q. Those rotary converters are on a circuit by themselves? A. Yes, sir.

Q. What is the number of that circuit?

A. We call it the rotary converter circuit.

Q. And that converter is to convert the alternating current to a direct current? A. Yes, sir.

Q. If No. 17 kicked out and the rotary converter circuit remained in they would still have power on the train long after the trommel screen had kicked out? A. Yes.

Q. The trommel screen would be stopped and the

(Testimony of James E. Higgins.)

lights would go out and there would still be power to run the train? A. Yes. [728]

Q. Now, at the time you installed this 3 horse-power motor, I wish you would explain to the jury in a brief way—not in detail, but explain in a general way, what kind of a motor it was.

A. It was a 3 horse-power 220 volt 3 phase motor.

Q. What is a 3 phase motor—what is a 3 phase circuit,—you have a 3 phase system, haven't you?

A. Yes, sir.

Q. What is a 3 phase system?

A. Well, it consists of 3 phases on a generator. They are so connected that when the generator is operating under normal conditions you have three phases. They have single phase generators, and two phase generators,—we have a 3 phase system here.

Q. Carry the juice on three wires, don't you?

A. Yes, sir.

Q. Your 3 phase system carries juice on three wires from the generator? A. Yes, sir.

Q. That 3 horse-power motor that you installed was a single phase motor?

A. It was a 3 phase motor running on a single phase circuit.

Q. It was a motor that did not fit conditions?

A. No, sir.

Q. What kind of a motor was indicated at the time you installed the motor at the trommel screen?

A. I never saw the blue-prints of that and I don't know what motor was indicated on them.

(Testimony of James E. Higgins.)

Q. You know what kind of a motor that you tried to get?

A. We didn't have any smaller motor so we had to put that larger motor on.

Q. Did the trommel screen require a motor of that size?

A. No, the construction foreman told me—

Mr. RODEN.—Never mind what the construction foreman told you. [729]

Q. What was the motor required?

A. That trommel screen would not have required over one horse-power to operate it.

Q. Did you have a one or two horse-power motor in stock? A. No, sir.

A. That was during the war? A. Yes, sir.

Q. Could you get one at that time?

Mr. RODEN.—We object to the question. The question is what did he install, not what he might have installed.

The COURT.—Yes, I think so.

Mr. HELLENTHAL.—If counsel will leave me alone I will get through with this thing in very short order.

Mr. RODEN.—Yes, but we don't want it in,—maybe you do, but we don't want it in. Of course you will get it in.

Q. You installed a 3 horse-power motor. Why did you install a 3 horse-power motor, Mr. Higgins?

A. Because that was the only motor we had at that time.

Q. What, if anything, did you go to get the right

(Testimony of James E. Higgins.)

size motor or the right type of motor?

A. We ordered a smaller motor.

Q. Did you get it right away? A. No.

Q. How long afterwards did you get it?

A. A little less than a year,—about 8 or 9 months, I think.

Q. Could *be* motors be had at that time in any less time?

A. We had trouble even getting our electrical supplies at that time.

Q. That was during the war period?

A. Yes, sir.

Q. Now, Mr. Higgins, while that 3 horse-power motor was in there, that single phase system motor, did you have any trouble with the trommel screen? [730]

A. Yes, we had trouble that I recollect on two different occasions.

Q. What happened on those occasions?

A. Well, we had disturbances on the power system and the motor stopped, due to the low voltage caused by the disturbances on the system, and it wouldn't start up again, and it was quite a little while before we got up there to look at the motor; and once the motor was setting on the line and burned up.

Q. Burned up and fixed again? A. Yes, sir.

Q. Did the trommel screen stop on those occasions? A. Yes, sir.

Q. Did the water run over?

A. Yes, it ran over once that I know of.

(Testimony of James E. Higgins.)

Q. The other times the water ran through the screen even though it stood still? A. Yes.

Q. Did you afterwards get a 2 horse-power motor? A. Yes.

Q. That was a 3 phase motor such as the system required? A. Yes.

Q. What did you do in the way of installing that?

A. We installed it as soon as we got it.

Q. How long before the slide was that?

A. Well, we installed that motor along in January of 1919.

Q. Now, after that did you have any trouble with the motor?

A. Yes, we had—we had trouble with the motor on a couple of occasions.

Q. I wish you would tell the jury what those occasions were and how it happened.

A. They were power disturbances similar to the ones we had before. The voltage dropped and went clear off and the power came back on again and the fuses we had on the motor were so [731] large that they didn't blow—one of the fuses blew on one occasion and left the motor running single phase, and it got pretty warm—in fact got so warm that the insulation ran from the windings on to the rotar and stopped it, and we had to take it out and repair it.

Q. You had the fuse too heavy at that time?

A. Yes, sir.

Q. Did the trommel screen stop at that time?

(Testimony of James E. Higgins.)

A. Yes.

Q. Did it overflow? A. Yes.

Q. How long was it until you got it fixed? You got it fixed, did you?

A. Yes; I put some boards in the bottom of the screen to hold the water in there.

Q. I wish you would tell that whole circumstance—what happened when the thing first burned out?

The COURT.—Mr. Hellenthal, what bearing has this on the question as to whether or not the slide was caused by the negligence of the Company?

Mr. HELLENTHAL.—Why, your Honor, it shows exactly how the water did come out of the screen when it overflowed, and shows why the water did not come when it is claimed to have come. It is the whole case—it is the crux of our case,—more important than any evidence we have had—more material—has more bearing and is more important than anything else.

The COURT.—This case has got to end to-morrow.

Mr. HELLENTHAL.—All right; I am going to put my case in.

Q. Mr. Higgins, explain to the jury how did that motor stop that time,—you have already said that it blew out a fuse? A. Yes.

Q. Did you go up there afterwards? A. Yes.

Q. At that time when you first went up there, was the water [732] running over the screen or through it?

A. It was running through the screen.

(Testimony of James E. Higgins.)

Q. It was not running over it? A. No, sir.

Q. It had been standing still about how long?

A. Possibly half an hour to 45 minutes.

Q. There was no water running over the screen?

A. No.

Q. How long did you stay there at that time?

A. I just stayed there long enough to look over the motor and put some boards in the bottom of the screen there so that if the screen did fill up with debris and start to spill over these boards would prevent it from spilling over.

Q. You had to take the motor out to have it fixed? A. Yes, sir.

Q. And that is the way you fixed the screen temporarily? A. Yes.

Q. When you went back there what did you find?

A. We went back there the next morning and the screen had been running over.

Q. What did you do?

A. We cut a hole in the screen to let the water run through and not screen it.

Q. Did you find at that time what caused the screen to run over?

A. Yes; it got filled up with an excessive amount of moss and debris.

Q. Did you find out where that moss and debris came from?

A. Yes; from some placer mining operations further up the creek.

Q. It came from some placer mining operations up in Gold Creek that you didn't know about the

(Testimony of James E. Higgins.)

day before, is that right? A. Yes.

Q. After that did you have any trouble with the screen?

A. We had trouble on one occasion after that, due to the electrician down at the stamp-mill pulling out a switch and [733] stopping the motor through negligence.

Q. That was another time the screen stopped?

A. Yes.

Q. Did it overflow at that time?

A. Yes, it overflowed at that time.

Q. Did you notice where the water flowed to?

A. No, sir, I didn't trace it at all—it happened at night.

Q. That screen was immediately started again?

A. Yes, sir.

Q. From that time on to the time of the slide did you have any trouble? A. No.

Q. When was the last time that you had any trouble with it?

A. That last time was in July or August, 1919.

Q. Since you put in the new motor, the two horse-power 3 phase circuit motor, did you have any trouble with the motor that was the fault of the motor itself? A. No, sir.

Q. Did you have any trouble with anything except outside disturbances that you have explained?

A. No, sir.

Q. Now, when you found that that motor had been overfused and burned out on the first occasion, what size fuse did you put in there?

(Testimony of James E. Higgins.)

A. Put 5 ampere fuses on it.

Q. What size fuses did you have in the motor at the time of the slide?

A. We had 5 ampere fuses.

Q. And that was the fuse that you had in all the time? A. Yes, sir.

Q. That 5 ampere fuse, how much overloaded was that, if any?

A. That would allow a 2 horse-power motor about 50 or 60 per cent overload. [734]

Q. And if the screen only required 1 horse-power it would be how much overload as a matter of fact?

A. It would be over 100 per cent overload.

Q. How much overload did you have in your circuit-breakers in the mill?

A. We have them set for,—must be about 20 to 25 per cent overload.

Q. You have them set for 120 to 125 per cent load?

A. I should think set at 20 to 25 per cent overload.

Q. So this circuit-breaker at the trommel screen was set over a hundred per cent while the other motors were set at 20 to 25 per cent? A. Yes.

Q. Now, would an instantaneous short circuit coming over the line have any effect on the motor at the trommel screen?

A. No,—that is the reason we had it so heavily overfused.

Q. It acted in the same manner as the time relay circuit-breaker, that is, an overload circuit-breaker?

(Testimony of James E. Higgins.)

A. It worked to that object, yes.

Q. So that it couldn't go out with a short circuit? A. No.

Q. Now, on the day of the slide did you have any electrical disturbances on your system—the morning of the slide? A. Yes.

Q. When.

A. We had some in the morning between 9 and 10 o'clock.

Q. Have you got a recording volt meter at your power plant?

A. Yes; we have them at all power plants.

Q. Have you a volt meter that automatically shows what your disturbances were on that morning? A. Yes.

Q. I hand you here a chart and ask you to tell the jury what that is.

A. This is a voltage chart that we had on a volt meter in the [735] power plant on January 2, 1920.

Q. That shows every disturbance that occurred that day? A. Yes, sir.

Mr. HELLENTHAL.—I offer that in evidence.

Mr. RODEN.—No objection.

(Whereupon said voltage chart was received in evidence and marked Defendant's Exhibit No. 11.)

Q. Now, you have an appliance that automatically indicates upon this chart that I now hold in my hand, Exhibit No. 11, the condition of the voltage at any given time?

A. Yes; it is recorded by means of clock move-

(Testimony of James E. Higgins.)

ment so it records the time very nearly—within a few minutes of the time it happens.

Q. And there is a needle that is fed with red ink that traces the disturbances upon the chart?

A. Yes, sir.

Q. Look at that and tell the jury what happened in the way of electrical disturbances between 9 o'clock and 10 o'clock the morning of the slide.

A. There was one disturbance about 9:30—or 9:25 I should say.

Q. 9:25 is the first one?

A. Yes; the second one was about 9:35, and the third one about 9:45.

Q. Those were disturbances between 9 and 10 o'clock? A. Yes.

Q. Do you know of your own knowledge of those disturbances to the system besides what is shown on the chart?

A. About 9:45, the last disturbance, there was some trouble showed up in the compressor plant up at the Jualpa plant substation.

Q. Did any of the motors go out in the forenoon while those disturbances happened, in the mill or elsewhere? A. Not that I know of.

Q. You don't know anything about that? [736]

A. No.

Q. You simply watched the power plant?

A. Yes.

Q. Did you inquire to find out where those disturbances came from? A. Yes.

Q. Did you make inquiry along the circuits of

(Testimony of James E. Higgins.)

the different lines you have? A. Yes.

Q. Could you find any cause for those disturbances? A. No.

Q. The trouble that showed up at the substation in the Basin was such as could be caused by a disturbance that occurred elsewhere? A. Yes.

Q. Now, do you know where the wires of the Alaska Gastineau and those of the Alaska Juneau cross? A. Yes, sir.

Q. Where is that?

A. Down there on the other side of the administration building.

Q. Where is it with reference to the slide?

A. Well, it is towards the power plant from the slide.

Q. How do those wires run there—how do they cross,—which is above and which is below?

A. The Alaska Gastineau wires are above the Alaska Juneau wires.

Q. About how far above? A. About 8 feet.

Q. That is only an approximate distance?

A. Yes.

Q. You would not be sure as to the exact distance? A. No.

Q. How wide is the span of the Alaska Gastineau at that point? A. About 300 feet.

Q. And where with reference to the ends of the span did the wires cross? [737]

A. Along about the middle.

Q. So that the point where the wires cross is where the sag is the greatest? A. Yes.

(Testimony of James E. Higgins.)

Q. Do you know where the tower of the Gas-  
tineau Company stood in the slide area?

A. Yes, I know approximately where it stood.

Q. You know there was a tower in the slide area?

A. Yes.

Q. Now, you know how those wires are fastened  
to the poles? A. Yes, sir.

Q. How are they fastened—are they slipped  
through or stationary?

A. They are slipped through the tie wires.

Q. Now, if a pole in the slide area should be  
moved by sudden jerks of the ground in which it  
stood, what effect would that have upon the wires  
at the point where they crossed?

A. That would allow the wires to sag more or  
less at the point where they cross, and if they sagged  
enough they would come in contact with the other  
wires below them.

Q. There is only one pole between the slide and  
the place where they crossed? A. Yes.

Q. Now, if those wires should come in contact  
there what effect would that have upon the system?

A. It would cause a short circuit or show a dis-  
turbance in the power system similar to what this  
chart shows.

Q. Create a condition similar to what the chart  
shows? A. Yes.

Q. Did you find upon your inquiry any other  
cause that might have caused these three short cir-  
cuits except the fact that those wires came together  
at that point? A. No, sir.

(Testimony of James E. Higgins.)

Q. That was the only one. Now, at about 11 o'clock, or shortly before 11, that shows also a short circuit,—or shortly [738] after 11 there is a short circuit registered there, is there not?

A. Yes.

Q. The voltage did not seem to drop as low as it did on the previous occasions? A.. No.

Q. If three short circuits—if those wires should come together three times in succession, about as I have indicated, how would that show upon the chart?

A. It would show one line—it would be so close together there the ink would blur together and look like one line.

Q. Show as it does show upon the chart?

A. Yes.

Q. What effect would those three short circuits, coming in quick succession, have upon the circuit-breaker as compared to the effect that one short circuit would have, coming instantaneously?

A. It would have more the effect of kicking the circuit-breakers out.

Q. It would have more the effect of kicking the circuit-breakers out even though the voltage did not drop so low? A. Yes, sir.

Q. The voltage might drop very low and come back without kicking out the circuit-breaker, whereas three short circuits coming in succession that way might kick the circuit-breaker out, is that right?

A. On an instantaneous short the voltage might

(Testimony of James E. Higgins.)

drop quite low and the motors would not have time to retard the rotation sufficiently to kick them out before the voltage came back up again; but if three shorts came in as you indicated there, it would give the motors more of a chance to retard, and when the voltage finally came up again it would cause them to kick out.

Q. What does the chart show with reference to another short circuit after that—one after 11 o'clock? [739]

A. It shows one there at about 11:15 on this chart.

Q. To what extent did that short circuit go—was that continuous or otherwise?

A. It was continuous—it shows that the voltage went clear down.

Q. That everything stopped? A. Yes.

Q. Shows there was no power on the line at all?

A. No.

Q. For how long a time?

A. Well, it would be about—oh, approximately 3 minutes on this chart.

Q. What is the length of time as shown on the chart between the time the three short circuits I have referred to came in and the time that all the power went off,—approximately—you cannot tell to the minute, can you?

A. Four or five minutes—six minutes.

Q. Anywhere along there?

A. I couldn't tell exactly.

Q. Might have been a little longer?

(Testimony of James E. Higgins.)

A. It might have been longer.

Q. Might have been anywhere from 8 to 9 or 10 minutes, might it not, Mr. Higgins?

A. I would say 5 to 6 minutes.

Q. Anyway, a short time—along about that?

A. Yes.

Q. Now, Mr. Higgins, I think you have already explained that if feeder No. 15, or No. 15 circuit, kicked out the trommel screen and the lights and the stamp-mill would all go out at the same time?

A. Yes.

Q. Could the trommel screen have power if the lights were out? A. No.

Q. If the lights were out that is a certain indication that everything on that circuit was dead?

A. Yes. [740]

Q. Could there be lights if there was no power on the circuit?

A. No, if there was no power on the circuit the lights would be out.

Q. And if the lights were out that would indicate for a certainty that there was no power on the circuit? A. Yes.

Q. All right. If any one was at that place marked "lights" and found the lights out he was there after the power had gone off the circuit?

A. Yes.

Q. Now, Mr. Higgins, that morning shortly after 11 o'clock, prior to the time that these disturbances occurred—just prior to that time—were you at the power-house?

(Testimony of James E. Higgins.)

A. You mean the last disturbance?

Q. Yes.

A. Yes, I was there,—I left the power-house about 11 o'clock.

Q. Some time after 11 o'clock?

A. Nearly 11 o'clock,—very close to 11 o'clock that I left.

Q. You could not state the exact time? A. No.

Q. It might have been a little later?

A. Yes, it might have been a little later.

Q. Where did you go?

A. I went up Front Street to Marshall and Newman's.

Q. Now, when you left,—before you left at that time, at 11 o'clock, or shortly after, were all the circuits in? A. Yes.

Q. Every feeder was in? A. Yes.

Q. Was No. 15 feeder, on which the trommel screen was situated, in at that time?

A. Yes, sir.

Q. Every feeder in the power-house was in?

A. Yes, sir. [741]

Q. Where did you go to?

A. I went up to Marshall & Newman's plumbing-shop.

Q. You followed up Front Street to Marshall and Newman's plumbing-shop? A. Yes, sir.

Q. You took the route that I am pointing to on the map,—you left the power-house at the point marked "power-house" on the map and followed

(Testimony of James E. Higgins.)

Front Street along towards Marshall and Newman's? A. Yes.

Q. Is that right? A. Yes.

Q. Now, did you see any flashes on your route to Marshall and Newman's? A. No.

Q. Now, if those three short flashes had occurred between the time that you left the power-house and the time that you got to the place marked "Saw-mill boarding-house" there, would you have seen them? A. No, I wouldn't have seen them.

Q. Explain to the jury why.

A. Well, you are down behind the hill there, and there is buildings all the way up on that street there, so it would shut off the view or reflection of any flashes that would occur any place along the line.

Q. And you didn't see them? A. No, sir.

Q. Now, from the time that you left the sawmill boarding-house up to Marshall and Newman's if flashes had occurred would you have seen them?

A. Yes, I would have seen the reflections there.

Q. You would have seen the reflections there?

A. Yes, sir. [742]

Q. Could such reflections have occurred without your noticing them at that time? A. No.

Q. Being in that business you would have been bound to have seen them? A. Yes.

Q. When you got to a point opposite the foundry did you look up the hill? A. Yes.

Q. Did you observe the trommel screen?

A. I did.

Q. What, if anything, did you observe at the trommel screen?

(Testimony of James E. Higgins.)

A. Water was running over the spillway.

Q. I want you to describe to the jury in what direction that water was spouting.

A. It was spouting right out of the spillway.

Q. In what direction,—which direction was the spout headed?

A. The spout was headed almost parallel with the mountain there.

Q. The spout was headed almost parallel with the mountain and almost parallel with Front Street?

A. Yes.

Q. As you looked up at it could you tell how wide the stream was? A. No, not very well.

Q. Tell the jury just how the stream looked, as quickly as possible, so we will get through.

A. It looked like a stream maybe as big around as that pitcher sitting on the desk there.

Q. Looked like a round stream? A. Yes.

Q. Could you see the face of it at all?

A. No, I couldn't see the face of it. I was looking kind of under it.

Q. Under it, into the edge of it?

A. Yes. [743]

Q. Into the edge of it and under it to some extent? A. Yes, sir.

Q. It was to some extent going from you?

A. Yes.

Q. And you saw the edge of the bow as it squirted out? A. Yes, sir.

Q. And slightly under it? A. Yes, sir.

Q. How far did it drop before it hit the ground—approximately, I mean?

(Testimony of James E. Higgins.)

A. From 6 to 8 feet—I couldn't say exactly.

Q. Now, at that time did you observe any water coming over the snowsheds at Portal Gulch?

A. Yes.

Q. How much water was coming over there?

A. There was quite a bit of water running over there.

Q. How was that coming over?

A. It was running over the snowsheds and falling down onto that roof of the flume.

Q. Where did it appear to you, as you saw it from the street, to be coming from—where did it shoot out from?

A. It spilled right off of that roof of the flume there—that is the most visible part of it.

Q. The most visible part is where it shot off the flume? A. Yes.

Q. In what direction did that shoot?

A. Straight down towards the street.

Q. Could you tell the width of that,—was the width of it visible, that is what I mean?

A. No; it looked like a wide stream where it spreads out there on the roof of that flume—I couldn't tell how wide it is.

Q. I am not asking you to tell how wide it was,—I say could you see the face of it from where you stood? A. Yes, sir. [744]

Q. Could you see the thickness of it? A. No.

Q. How far did that drop before it hit the ground?

A. Around 20 or 30 feet—I couldn't say exactly—I never measured that there.

(Testimony of James E. Higgins.)

Q. To one standing where you stood, not knowing the conditions as you knew them, how would that stream appear as to where the water would seem to be coming from?

A. The first impression would be that it come from that flume.

Q. It would require a critical examination to see that it did not come from the flume? A. Yes.

Q. At that distance? A. Yes.

Q. After you saw this water coming out of the spout of the trommel screen what did you do?

A. I immediately hurried up to Marshall and Newman's and telephoned down to the power plant to a man there to go immediately to the mill and get Nordling and tell him to go to the trommel screen and find out what the trouble was.

Q. Who answered the phone?

A. A man by the name of Summers.

Q. And you directed him to go immediately and find Nordling where? A. In the mill.

Q. And you told him to tell Nordling to go to the trommel screen? A. Yes.

Q. You were in Marshall and Newman's?

A. Yes.

Q. That was immediately after you saw the water spouting out?

A. It would be probably three minutes.

Q. It was the exact length of time it would take you to go from the place where you saw it to Marshall and Newman's? A. Yes, sir.

Q. And you immediately went in and telephoned,

(Testimony of James E. Higgins.)

is that right? [745] A. Yes, sir.

Q. How far was it from the place where you saw the water spout out up to Marshall and Newman's?

A. Well, it is about 3 blocks or four blocks up to Marshall and Newman's.

Q. It isn't that far, Mr. Higgins, is it—you went to Marshall and Newman's store on Front Street, didn't you? A. Yes, sir.

Q. The foundry was on Front Street, wasn't it?

A. Yes.

Q. Well, I guess the jurymen know where it is, anyhow. You went into Marshall and Newman's and telephoned at once, is that right?

A. Yes, sir.

Q. After you were in Marshall and Newman's what happened?

A. The phone rang, and the clerk was busy arguing with Henry La France about a bill and so I answered the phone and Mrs. Marshall was on the phone and wanted to know where the fire was.

Q. Had you heard the fire-bell ring? A. No.

Q. Then you talked to Mrs. Marshall a minute?

A. Yes.

Q. Then what did you do?

A. I stepped outside to see if I could see any fire,—she said they gave the alarm for that section of town.

Q. Did you see anything?

A. I saw the fire engine standing there.

Q. That would be a minute or three or four minutes after you phoned in the first place? A. Yes.

(Testimony of James E. Higgins.)

Q. After you telephoned to Nordling, I mean?

A. Yes, sir.

Q. Did you immediately go out of the store or did you remain there for a while? [746]

A. No, I stayed in the store until I finished up my business.

Q. How long were you in there, probably?

A. I was in there a matter of probably ten minutes.

Q. Did you know what happened in the meantime? A. No.

Q. Then where did you go?

A. I went out on the street, saw the effects of this slide, saw the people down there, and I went on down the street and looked at it, and went right down to the Alaska Juneau.

Q. As you stood there looking at the slide was the water already coming over the apex of it, the top of it?

A. There was a little water coming over there—probably 5 or 10 gallons a minute.

Q. You saw the water coming over the top of the slide at that time? A. Yes, sir.

Q. Then where did you go?

A. Went right down to the Alaska Juneau.

Q. Whom, if anyone, did you meet on your way?

A. I met John Richards.

Q. Where did you meet him?

A. Right opposite the sawmill boarding-house.

Q. Jack Richards, the superintendent of the mine? A. Yes, sir.

(Testimony of James E. Higgins.)

Q. What did you tell him?

A. I told him about the trommel screen running over,—I told him about the slide and about the water coming over the slide.

Q. Where did you go?

A. I went on down to the Alaska Juneau—I went to the power-house and he went to the office.

Q. After you got into the power-house did you see Wert Newman? A. Yes, sir.

Q. Where did you and Wert Newman go from there?

A. I stayed around the power-house for a little while. [747]

Q. How much do you mean by that—a minute or five minutes?

A. I was probably there 5 to 8 minutes.

Q. Then where did you go?

A. Newman and I went up Ewing Street up to the slide area, over on Gastineau Avenue and then on up to the trommel screen.

Q. You didn't examine any trail at that time, did you?

A. No, I went right up on the trail.

Q. When you got up to the screen had the screen started to spill over again?

A. Yes, the screen was spilling over again when I got up there.

Q. You understood that Clauson had started it before?

A. I didn't know anybody had been there until I got up there.

(Testimony of James E. Higgins.)

Q. When you got up there the screen had started spilling, anyway? A. Yes, sir.

Q. What did you do?

A. I gave it about a quarter of a turn over,—I turned the screen over so that the water had a clean place to run through and it ran through the screen into the penstock.

Q. Then what did you do?

A. I re-fused the motor and started it up.

Q. That is all there was to do? A. Yes, sir.

Q. Then did the screen spill over any more after that? A. Not to my knowledge.

Q. I mean while you were there—while you observed it? A. Not while I was there; no.

Q. That stopped it. Now, Mr. Higgins, you found the fuse had been blown?

A. There was two fuses blown on the switch.

Q. The power was on when you got there, wasn't it? A. Yes.

Q. The power was on that circuit—No. 15 circuit?

A. Yes, sir.

Q. And if the starting switch had not been thrown in that [748] would blow out the fuse, wouldn't it?

A. If the power went off and nobody had been there to pull the starting switch out and the power came on again the fuse would have been blown.

Q. That is what I mean,—if the power on No. 15 circuit went off of course the trommel screen would stop? A. Yes, sir.

Q. Then if the power came on afterwards that

(Testimony of James E. Higgins.)

would burn the fuse out? A. Yes, sir.

Q. That is what the fuse is there for?

A. Yes, sir.

Q. If the fuse wasn't there it would burn the motor out, is that the idea? A. Yes, sir.

Q. And the fuse had burned out and you had to re-fuse it? A. Yes, sir.

Q. And if you had been there before the power came on you have a starting switch that you can throw on to keep it from burning out the fuse?

A. Yes, sir.

Q. That starting switch had not been thrown on?

A. No.

Q. If the power came on while it stood on the running switch it would blow the fuse?

A. Yes, sir.

Q. And you re-fused the motor and started it?

A. Yes, sir.

Q. And that is all there was to it? A. Yes, sir.

Q. Now, how long after that motor at the trommel screen had stopped would it retain any heat at all?

A. It would retain the heat for a while; but in half an hour the temperature would drop so that a person who was familiar with the running heat of that motor would have noticed it. [749]

Q. If it stood still for an hour what would its condition be with reference to being hot or cold?

Q. It would be almost the temperature of the atmosphere in an hour.

Q. It would be practically cold in an hour?

(Testimony of James E. Higgins.)

A. Yes.

Q. And if it was quite warm still, running heat I mean, how long could it have stood still—not to exceed how long?

A. It couldn't stand still more than 15 or 20 minutes and retain its heat very near the running heat.

Q. From then on it would cool off gradually so you could tell how long it had been standing still by feeling of it? A. Yes, sir.

Q. You did not yourself feel of it? A. No, sir.

Q. Did you look at the ground under the spout on that occasion, where you had seen the water drop? A. Yes, I looked at that.

Q. Was there any abrasion of the soil there—any cut, or any evidence that the water had cut away the ground? A. Not that I could see; no.

Q. You could have seen it if there had been any, couldn't you?

A. Yes; there was no abrasion where the water had hit the ground at all.

Q. No abrasion where it ran down the trail?

A. No.

Q. Could you see where the water had been running?

A. I could when I came up the trail there—there is a place where the water came over the trail and over the bank—it showed there where it had washed down a little by the dirt and debris and muck and small rocks, etc.

Q. The trail itself did not show any evidence of wash? A. No.

(Testimony of James E. Higgins.)

Q. Except that one point? A. Yes, sir. [750]

Q. Was there any ice in the trail?

A. Yes, there was; the trail was so icy down below that point, and so slippery, due to the water being in the trail, I had to stay outside of the trail practically all the way up.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Mr. RODEN.)

Q. That is because it was so icy? A. Yes, sir.

Q. You know that the motor was still warm when you got up there, don't you?

A. I didn't feel of the motor myself.

Q. You know it was warm?

A. I didn't feel of it so I couldn't say it was warm.

Q. If that motor up there stops, Mr. Higgins, a man has to walk all the way up there to start it again, doesn't he? A. Yes.

Q. In other words, there is no device whereby you can start it or stop it anywhere near the mill or in the mill, is there? A. No.

Q. And all the water that you saw coming over the slide when the fire department was down there was about 5 to 8 gallons an hour?

A. I judge it to be around that amount.

Q. Now, when you saw the water running over the trommel there—

Mr. HELLENTHAL.—Just a minute—I don't think the witness understood the question—counsel said 5 to 8 gallons an hour.

(Testimony of James E. Higgins.)

Mr. RODEN.—You can ask him that question on redirect—shows how reliable he is.

Q. Now, when you saw the water running over the trommel there, that came out in a round stream, didn't it? A. Yes.

Q. Looked that way? [751]

A. Yes, sir.

Q. You know as a matter of fact that a round stream couldn't come out of that trommel, could it?

A. Yes, a round stream could come out of the trommel—that is, the spillway was dished up this way so that the water on the under side would be,—well, something similar to a segment of a circle.

Q. The same moment that the water came out of the mouth of that trommel, even if it were perfectly round, it would have at once begun to spread here, wouldn't it, the moment it left the spout?

A. No, that water did not begin to spread because that spillway was so steep and the water ran down so rapidly that it did not spread out hardly at all—it stayed almost all together in one stream.

Q. All right, but it would necessarily spread?

A. No—I have seen that water run through there a good many times.

Q. When you looked up from Marshall and Newman's after the slide had happened that wasn't running any more?

A. I didn't look up there after I came out of Marshall and Newman's at all.

Q. You looked up to the apex of the slide and

(Testimony of James E. Higgins.)  
you saw that 5 or 6 gallons there?

A. I don't think I could see the spillway of the trommel screen there from where I was looking up at the apex of the slide.

Q. But when you noticed that water coming out of that spillway down there at the foundry you moved pretty rapidly to the telephone, didn't you?

A. I walked right along—hurried up my gait a little bit in order to get up there and telephone.

Q. It looked pretty serious to you up there, didn't it?

A. It didn't look so very serious because I had never heard of any damage caused before by the water and I knew that the [752] water had run through there before; but our idea is to keep that screen running so as to get the water down to the mill.

Q. It was just a matter of efficiency to hurry to Marshall and Newman's? A. Yes, sir.

Mr. RODEN.—That is all.

#### Redirect Examination.

(By Mr. HELLENTHAL.)

Q. Mr. Higgins, counsel asked you how many gallons per hour ran over the top of that slide,—did you mean per hour? A. I meant per minute.

Mr. RODEN.—He said per hour.

Q. Did you say per hour?

A. Well, if I did I made a mistake—I was looking for the counsel to ask me per minute.

Mr. HELLENTHAL.—That is all.

(Witness excused.)

**Testimony of H. G. Nordling, for Defendant.**

H. G. NORDLING, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

**Direct Examination.**

(By Mr. HELLENTHAL.)

Q. State your name. A. H. G. Nordling.

Q. Where do you live? A. Juneau.

Q. What, if any, position do you occupy with the Alaska Juneau Gold Mining Company?

A. Foreman in the electrical department. [753]

Q. Did you occupy that same position at the time of the slide? A. I did.

Q. That is January 2, 1920? A. Yes, sir.

Q. Do you know where the trommel screen was at that time? A. I do.

Q. Do you know where the motor was that operated it? A. Yes, sir.

Q. On the day before the slide, January 1st, 1920, were you up there? A. I was.

Q. At what time, do you remember?

A. I am not sure—I think it was in the afternoon.

Q. Some time in the afternoon? A. Yes, sir.

Q. At that time did you examine the motor on the screen? A. Yes, sir.

Q. You went there for the purpose of examining the motor? A. That is part of my duties.

(Testimony of H. G. Nordling.)

Q. That is part of your duties to examine that how often?

A. I made it a duty to go there two or three times a week, anyway.

Q. And you do that with all of your other electrical applicances throughout the system?

A. Yes, sir.

Q. Make those examinations? A. Yes, sir.

Q. On this occasion you made an examination of the motor at the trommel screen? A. Yes, sir.

Q. Was the motor running all right?

A. Yes, sir.

Q. Was the trommel screen revolving all right?

A. Yes, sir. [754]

Q. Was there any water running through the spillway? A. No, sir.

Q. No water coming from the trommel?

A. No, sir.

Q. On the day of the slide where were you sometime after 11 o'clock, when the slide happened?

A. I was about the middle of the mill on what is known as the ball mill motor floor.

Q. What, if anything, happened at that time?

A. The motors in the mill all went dead—that is, they stopped.

Q. You didn't notice at that time whether the lights went out or not?

A. I did not; the lights were turned off in that part of the mill and I wouldn't have known it—it was daylight at that time.

Q. You went from there to where?

(Testimony of H. G. Nordling.)

A. I went from the ball mill motor floor down through the mill.

Q. To what part of the mill?

A. To what is known as the retreatment plant.

Q. Did you see Mr. Summers there later on?

A. I did.

Q. About how long after the motors kicked out did you see Mr. Summers?

A. Possibly fifteen minutes.

Q. Something like that? A. Yes, sir.

Q. You would not be positive, I suppose, as to the minute? A. Oh, no.

Q. Where did you meet Mr. Summers?

A. In the retreatment plant, about the middle of the floor there.

Q. What, if any, directions did he give you?

A. He gave me instructions from Mr. Clauson to proceed immediately to the trommel screen and see what was the trouble.

Q. Did you do so? A. I did. [755]

Q. Which way did you go?

A. I walked the stairs up through the mill to the tipple, the ore train was just about ready to pull out and I got on the locomotive of the ore train and rode out.

Q. You had to wait a little while for the train?

A. I had to wait until they dumped one load, I think it was.

Q. You had to wait a little while before the train started? A. Yes.

Q. And then you got on the train and went over

(Testimony of H. G. Nordling.)

to the trommel? A. Yes, sir.

Q. Whom, if any one, did you meet at the tipple?

A. Mr. Clauson.

Q. He was going to the trommel too?

A. Yes, sir.

Q. And you and he went together? A. Yes, sir.

Q. After you got to the trommel screen what did you observe there?

A. As I came out of the dry-room and went on to the platform of the trommel screen, or penstock as it is known there, I observed first the water coming out of that chute—out of that spout of the trommel. I went right in, and as I went in, as my duties required me, I naturally laid my hand on the motor.

Q. How did you find the motor—was it hot or cold? A. The motor was fairly warm.

Q. Was it standing still or running?

A. Stopped.

Q. And the trommel screen was also standing still? A. The trommel screen was stopped also.

Q. And it was filled up with muck and debris?

A. I didn't examine the screen at all.

Q. How warm was the motor when you put your hand on it, with reference to its running heat,—do you know what its running heat is?

A. Its running heat is about 70 degrees. [756]

Q. How warm was it when you put your hand on it?

A. Oh, the motor, I would think then would have been about 55 or 60—something like that.

(Testimony of H. G. Nordling.)

Q. About 55 or 60 when you put your hand on it?

A. Yes, sir.

Q. Do you know how long it would take that motor to get from its running heat—to cool off to the extent that it was when you put your hand on it?

A. That motor should get cold inside of an hour—to atmospheric temperature.

Q. How long would it take to get from running heat to the temperature it was when you put your hand on it at that time?

A. I should judge it was stopped about half an hour.

Q. Not to exceed that? A. I don't think so.

Q. Did you examine the ground under the spout, Mr. Nordling?

A. Well, the only thing that I noticed was the water coming out of the chute,—there was quite a quantity of water coming out of the chute and I just noticed it hitting the ground there going down the hill.

Q. But you didn't notice whether it made any cut or abrasion in the soil?

A. It wasn't making any cut—it went right straight over the ground as it went down.

Q. It was not making any cut or abrasion?

A. No, sir.

Q. Just flowing down the hill? A. Yes, sir.

Q. In the direction of the trail?

A. It went into the brush there,—there are some

(Testimony of H. G. Nordling.)

small trees and stuff there and I couldn't see just where it went to.

Q. After you got to the trommel you found the power was off, did you?

A. As I went into the trommel the lights were out and I knew [757] that the power was off.

Q. Did you change the switch at all?

A. I didn't touch the switch because I wanted the power on before I did anything with it.

Q. You left the motor on the running switch?

A. I did.

Q. So that the fuse would blow out if the power came on? A. Yes, sir.

Q. Then where did you go?

A. I immediately went back to the mill and called up the power-house — called up Mr. Bauzman in the power-house, and told him to give me current on No. 15 feeder.

Q. That is the feeder that this trommel screen was on? A. Yes, sir.

Q. And the feeder the lights in the tunnel were on? A. Yes, sir.

Mr. HELLENTHAL. — You may cross-examine.

Cross-examination.

(By Mr. RODEN.).

Q. How much time did you spend up there, Mr. Nordling?

A. No time to speak of at all—it wouldn't take me but a minute or two to go in the trommel and right back over to the mill and get the power on.

(Testimony of John Holmquist.)

Mr. RODEN.—That is all.

(Witness excused.)

(Whereupon court adjourned until 1:30 P. M.)

[758]

#### AFTERNOON SESSION.

April 1, 1921, 1:30 P. M.

##### **Testimony of John Holmquist, for Defendant.**

JOHN HOLMQUIST, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

##### Direct Examination.

(By Mr. HELLENTHAL.)

Q. What is your name? A. John Holmquist.

Q. Where do you live? A. Juneau.

Q. At what place in Juneau?

A. Gastineau Avenue.

Q. Where with reference to Portal Gulch?

A. About 6 or 8 feet on the south side.

Q. Do you know where Portal Gulch is?

A. Yes.

Q. Do you know where the trommel screen is?

A. Yes.

Q. You are foreman in the Alaska Juneau mine?

A. Yes.

Q. On the afternoon of January 1st when did you come home?

A. Oh, I left the mine about a quarter to four—I got home about half-past four.

(Testimony of John Holmquist.)

Q. When you got home that day was there any water coming from the trommel screen? A. No.

Q. Was there any water in Portal Gulch?

A. Yes.

Q. How much?

A. Oh, the flume was full—that side flume that is down there.

Q. What is the size of that side flume?

A. It is 3 feet by 2, I think it is.

Q. It is a pipe covered with a flume? [759]

A. No, it is a plank flume.

Q. And it is 3 feet wide and 2 feet deep?

A. Yes.

Q. That is the flume that the city put in in Portal Gulch to take care of the Portal Gulch water? A. Yes.

Q. And runs down to Gastineau channel?

A. Yes.

Q. At your house that flume was running full, was it? A. Yes, sir.

Q. Where was that water coming from?

A. The biggest part of it was coming over the snowshed.

Q. During the night did that water continue to run? A. What?

Q. During the night of January 1st, between January 1st and 2d, was there much water in that flume that night?

A. Yes, there was lots of water in the flume.

Q. During that night did you have to get up to clean the flume out?

(Testimony of John Holmquist.)

A. I was up the night before the slide—I was up a couple or three times to clean the flume.

Q. At that time the flume was running full of water? A. Yes, sir.

Q. And you had to go out and clean out the flume and clean the brush and stuff out of it. How much water was running in Portal Gulch at that time as compared to what there was at other times?

A. Well, I ain't seen so much water there more than once before and that was the time they had the flood at the Casey Shattuck addition.

Q. The time the flood occurred in the Casey Shattuck addition was the only time you had seen as much water there before? A. Yes.

Q. Have you ever seen as much water there since that? A. No. [760]

Q. Did you ever have to get up nights to keep that thing clean any other time except this time and the time of the Casey Shattuck flood?

A. No.

Q. You have lived there for some time?

A. Yes.

Q. What was causing all this water to flow?

A. The rain, of course.

Q. Was there any snow melting—was the snow melting on the hill?

A. Snow on the top of the hill, I guess.

Q. I say was the snow melting so that it made water? A. Oh, yes, the snow was melting.

Q. The snow was melting and running down there? A. Yes.

(Testimony of John Holmquist.)

Mr. HELLENTHAL. — You may cross-examine.

Cross-examination.

(By Mr. RODEN.)

Q. You are foreman for the Alaska Juneau, are you? A. Yes, sir.

Q. How long have you been foreman up there?

A. About eight and a half years.

Q. And your brother Fred is working up there?

A. Yes.

Q. And your other brother too?

A. Yes,—no, Fred isn't working up there now.

Q. He quit a couple of days ago? A. Yes.

Q. You have never seen as much water coming down Portal Gulch as you saw on the 2d of January? A. Yes, I saw it once before.

Q. Yes, except once before, and that was when the Casey Shattuck addition had trouble?

A. Yes, sir. [761]

Q. It was raining very heavily on the 2d of January, wasn't it? A. Raining heavy, yes.

Q. What part of the day did it rain the heaviest?

A. I couldn't tell you—I was underground—I don't know.

Q. It was raining very heavily on the 1st of January too, was it?

A. It was raining heavy in the morning when I went to work.

Q. I am talking now about the 1st of January?

A. The first of January?

Q. Yes. A. I don't remember—I don't know.

(Testimony of John Holmquist.)

Q. You don't know whether it was raining very heavily on the 1st of January or not?

A. I don't.

Q. But on the 2d, in the morning when you went to work, it rained very heavily? A. It did.

Q. And you went to work about 7 o'clock?

A. A little before seven.

Q. And of course you went into the mine then, and when did you come out again?

A. About 2:30.

Q. About 2 o'clock; it was raining just about as heavy then as it was when you went in, was it?

A. I don't remember—I don't think it rained so heavy when I come out.

Mr. RODEN.—That is all.

(Witness excused.) [762]

#### **Testimony of L. Bauzman, for Defendant.**

L. BAUZMAN, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

#### **Direct Examination.**

(By Mr. HELLENTHAL.)

Q. You may state your name.

A. L. Bauzman.

Q. Where do you live, Mr. Bauzman?

A. Dayton, Ohio.

Q. Where are you employed?

A. National Cash Register Company.

(Testimony of L. Bauzman.)

Q. Did you ever live in Juneau? A. Yes, sir.

Q. Were you living in Juneau on the 2d of January, 1920? A. Yes, sir.

Q. What were you doing at that time?

A. I was in charge of the power-house of the Alaska Juneau Company.

Q. You were working for the Alaska Juneau Company in charge of the power-house?

A. Yes, sir.

Q. Were you in charge of the power-house in the forenoon of that day? A. Yes, sir.

Q. During the forenoon of that day what, if any, electrical trouble did you have in the power-house between the hours of 9 and 10 o'clock in the morning?

A. About 9:25 there was a disturbance on the line.

Q. On that occasion—I call your attention to a voltage chart, Exhibit No. 11, that is a voltage chart kept in the power-house? A. Yes, sir.

Q. And was kept on that day?

A. Yes, sir. [763]

Q. Does that indicate electrical disturbances that occurred on that morning? A. Yes, sir.

Q. What electrical disturbances were there between 9 and 10? A. There was three of them.

Q. As indicated on that chart? A. Yes, sir.

Q. What time did the first one occur?

A. 9:25.

Q. And the second one? A. About 9:35.

Q. When was the next one? A. About 9:45.

Q. Now, during the time that these electrical dis-

(Testimony of L. Bauzman.)

turbances happened, Mr. Bauzman, did any of the circuit-breakers in the power-house that control the various circuits kick out?

A. Not the circuits going up to the mill or any of our power plants—nothing at all.

Q. None of your circuits going up kicked out at that time? A. No.

Q. Between 9 and 10. Now, did you have any further electrical disturbances that forenoon?

A. We did after 11 o'clock.

Q. Now, that chart indicates another drop of voltage at about 11:10, doesn't it? A. Yes.

Q. At that time what did you notice on the switch-board?

A. Well, I noticed the lights—they sort of went down, and they were down probably four or five seconds, and then they come up, and then they went down,—there was about three of those, a little interval between.

Q. Three flickers on the line—on the switch-board? A. Yes, sir. [764]

Q. What did that indicate with reference to short circuits?

A. It looked like a series of short circuits.

Q. Indicated three short circuits with short intervals between?

A. Yes, I imagine 3 or 4 minutes between.

Q. How are those three short circuits indicated upon the voltage chart?

A. It shows a drop in voltage, but the line is a little wider than the average mark—shows a little wider mark.

(Testimony of L. Bauzman.)

Q. The time in between each drop in voltage wasn't sufficient to make separate lines?

A. No.

Q. The instrument is not fine enough for that?

A. No, the distance is too close there.

Q. Too close together and it shows as one line on the chart? A. Yes, sir.

Q. But you saw the three drops in voltage on the switch-board? A. I did.

Q. At that time what, if anything, happened to any of the feeders that leave the power-house for the various parts of the property to supply current?

A. At the time these three—

Q. Yes, sir.

A. Fifteen kicked out.

Q. That is the feeder that goes to the trommel screen, to the lights in the tunnel and to the stamp-mill? A. Yes, sir.

Q. Or don't you know about that, Mr. Bauzman?

A. Yes, sir; I know all about it.

Q. That is feeder No. 15?

A. I know it was No. 15; yes, sir.

Q. That is the one that kicked out at that time?

A. That is it.

Q. Did the other feeders remain in?

A. All of them. [765]

Q. What happened shortly after that?

A. Oh, in about five minutes, I should say, everything went out—the whole business.

Q. All the power went off in the entire system?

A. Yes, sir; everything.

(Testimony of L. Bauzman.)

Q. In the forenoon between 9 and 10 did you observe any flashes?

A. Why, I observed one along about 9:25.

Q. About 9:25 you observed a flash?

A. Yes, sir.

Q. Following that flash did the voltage drop?

A. There was a slight drop in voltage; yes, it did drop because right after the flash I went over and looked.

Q. You went over and looked and saw there was a drop in the voltage. About, you said, 5, 6 or 8 minutes, or something like that, after those first three flashes the power went off?

A. Yes; it was about 5 minutes, I would say, maybe six.

Q. About 5 minutes later all the power went off. Now, at the time that that power went off, what, if anything, happened in the way of a telephone ring in your office?

A. Why, just about the time that went off, everything went dead, I heard the phone ring—I didn't answer it myself.

Q. Why didn't you answer it?

A. I was busy at the board.

Q. You were too busy at the board with those shorts—who did answer it?

A. An electrician by the name of Summers.

Q. After Summers answered the phone do you know where he went?

A. He came out and told me who called up and where he was going.

(Testimony of L. Bauzman.)

Q. Who was it that called up? A. Higgins.

Q. Earl Higgins—where did he say he was going?

A. He said he was going to the mill after Nordling.

Q. That was directly after everything went dead?

[766]

A. Yes, sir; about the same time—I should judge about half a minute, or something like that.

Q. Then what did you do?

A. After everything went dead?

Q. Yes.

A. I went out to the tower—that is, the tower just outside of the plant, and we cut off Nugget Creek.

Q. You cut off Nugget Creek? A. Yes, sir.

Q. What did you do that for?

A. We knew we had trouble and didn't know where it was so that was our first operation.

Q. That left the power connected with Sheep Creek only?

A. It left the switches all closed with Sheep Creek.

Q. Then what did you do after that?

A. I come back in the power-house and I didn't see any lights so I phoned Sheep Creek to bring the voltage up to normal.

Q. And that brought the power back on the line?

A. Yes, sir; after I had called.

Q. At that time did you throw in any of the switches? A. No.

Q. After Sheep Creek got back on the line how long was it before you threw in the switch going

(Testimony of L. Bauzman.)

up the direct current line to the trolley?

A. It must have been a couple of minutes because after I had phoned I took a look at Gastineau to see if they had juice, and that took me a minute or maybe two minutes, and then I went and threw in that direct rotary through there.

Q. That was the first one you three in?

A. Yes, sir.

Q. You threw that in so they would get power up on the tramline? A. Yes, sir.

Q. And could run the trains?

A. Yes, sir. [767]

Q. Now, did you throw in No. 15 at that time, or didn't you throw that in until later?

A. We waited until we got a telephone call.

Q. You left 15 out until you got a telephone call?

A. Yes, sir.

Q. And when did you get a telephone call—how much later?

A. That would be about 20 or 25 minutes, I guess.

Q. After the power went off? A. Yes, sir.

Q. Who called you?

A. Nordling, the electrician in the mill.

Q. Then what did you do with reference to switch No. 15? A. Threw it in.

Q. Then they had power on circuit No. 15?

A. Yes.

Q. While all this was going on on this morning did you notice Mr. Wert Newman come into the power-house? A. Yes, sir.

(Testimony of L. Bauzman.)

Q. About how long after the entire business was dead did he come in?

A. Oh, it was about 10, maybe 12, minutes.

Q. And Mr. Summers had gone to the mill in the meantime?

A. He had gone before Wert got in there.

Mr. HELLENTHAL.—That is all; you may cross-examine.

Cross-examination.

(By Mr. RODEN.)

Q. When did you leave here, Mr. Bauzman?

A. What year?

Q. Yes.

A. The last day of September, last year.

Q. September, 1920; and you were sitting here yesterday when this man Newman was testifying, weren't you? A. Sure. [768]

Q. And you heard him say it was about 10 or 12 minutes after the power went out that he got down to the power plant, didn't you?

A. Perhaps he did.

Q. And it wasn't 13 minutes, was it, as near as you can get it?

Mr. HELLENTHAL.—I object to that question because it is putting a statement before the witness that is not accurate, because Mr. Newman didn't testify how long it was after the power went off that he came in—he didn't know.

The COURT.—It is immaterial so far as the examination of this witness is concerned what some other witness said.

(Testimony of L. Bauzman.)

Mr. RODEN.—I am asking if it wasn't 13 minutes.

The COURT.—Then ask him that question without any reference to what Mr. Newman or anybody else said.

Mr. RODEN.—I want to refresh his memory as to where he got his information from.

Q. It wasn't 13 minutes after the power went off that Newman came in there, was it?

A. I said it was between 10 and 12 minutes when he came in there.

Q. Was it 11 minutes?

A. I don't know what it was,—I said it was between 10 and 12.

Q. It wasn't any less than 10?

A. I wouldn't say so.

Q. And no more than 12—you remember exactly the time, do you? A. Yes, sir.

Q. How do you happen to be here, Mr. Bauzman?

A. Up in this country?

Q. Yes. A. I was sent for.

Q. Who sent for you? A. Mr. Bradley.

Q. And since you got here you have talked this matter over a good deal with him, haven't you?

A. Maybe and maybe not. [769]

Q. What have you done?

A. A general view of it?

Q. Yes. A. I told him what I knew, was all.

Q. And you have talked to the other electricians about this matter, haven't you? A. Some.

Q. Sure, just a very little?

(Testimony of L. Bauzman.)

A. We discussed the case, sure.

Q. And you have been attending court here ever since you came, haven't you? A. No.

Q. Pretty nearly all the time?

A. I think almost about two days.

Q. You haven't been here very long?

A. No, sir.

Q. When a disturbance is indicated in the powerhouse you cannot tell on what line it occurs, can you?

A. We cannot tell exactly but we know just about the direction—we could see the direction of that flash.

Q. Direction of what flash?

A. That I saw in the morning.

Q. Did you see a flash in the morning?

A. I did.

Q. About when was that? A. About 9:25.

Q. And of course that flash would be an absolute indication as to where a disturbance might occur at 11:15? A. No, sir.

Q. Might have occurred for all you know in Nugget Creek, might it not?

A. No; you couldn't see that far.

Q. I am asking you if the disturbance at 11:15 might not be caused by some disturbance on the Nugget Creek line? [770]

A. We didn't know where it came from.

Q. What line were you working on that day?

A. I wasn't working on any line.

Q. I am asking you what power lines you were

(Testimony of R. R. Young.)

getting power from into your station that day?

A. The Nugget Creek, the Sheep Creek, and the 240 from Treadwell and the Gastineau.

Mr. RODEN.—That is all.

(Witness excused.)

#### **Testimony of R. R. Young, for Defendant.**

R. R. YOUNG, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

#### **Direct Examination.**

(By Mr. HELLENTHAL.)

Q. State your name. A. R. R. Young.

Q. Where do you reside, Mr. Young?

A. Juneau.

Q. What do you do—what is your occupation?

A. Agent for the Pacific Coast Coal Company.

Q. Were you so employed on the 2d day of January, 1920? A. Yes, sir.

Q. On that day do you recall the slide that is the subject of inquiry? A. Yes, sir.

Q. Where were you at the time this slide happened, Mr. Young?

A. Standing in the hopper at the old dock at the foot of Main Street.

Q. In the hopper of the old dock of the Pacific Coast Company at the foot of Main Street?

A. Yes, sir. [771]

Q. From where you were did you have an unobstructed view of the slide area? A. Yes, sir.

(Testimony of R. R. Young.)

Q. What, if anything, directed your attention to the slide? A. Flashes.

Q. Those were the flashes that occurred when the tower fell?

A. Yes, it was a steel tower falling, and the wires breaking.

Q. You didn't see the flashes before that, I believe? A. No, sir.

Q. The first flash you saw was the big one when the tower fell?

A. There was several flashes—I don't know how many—quite a lot.

Q. The whole thing went by like lightning?

A. Yes, sir.

Q. That was the time the slide was coming down the hill? A. The slide was on its way then.

Q. Now, the buildings had already started and gone a considerable distance down the hill before the tower fell?

A. When the tower fell, when the flashes were taking place, I don't know which buildings it was, but the buildings were breaking through the bridge—the Gastineau Avenue bridge just about the same time.

Q. About the same time that you looked up did you discover the slide area after the buildings had settled? A. Yes, sir.

Q. Did you observe the place where the slide had broken loose—the top or apex of the slide area?

A. Yes, sir.

Q. At that time was there any water coming over

(Testimony of R. R. Young.)

that top or apex? A. No, sir.

Q. How long did you observe that?

A. Probably for a minute or two.

Q. And you are positive there was no water coming at that point at that time? [772]

A. Yes, sir.

Q. Then where did you go?

A. I came down the ladder and went over to the slide—went in back of Cordes' store.

Q. Where the slide had occurred? A. Yes, sir.

Q. You went to the slide? A. Yes, sir.

Q. When you got there and on your way down there did you see the apex or the top of the place where the slide had broken loose—when you first got there?

A. Yes; when I got in front of the soda works.

Q. You then observed the top where the slide had broken loose? A. Yes; I looked up there.

Q. At that time when you were in front of the soda works was there any water coming over the top of the slide? A. No, sir.

Q. That is, referring to the place where the ground had broken loose? A. Yes, sir.

Q. And you are positive there was no water coming there at that time? A. Yes, sir.

Q. How long after that was it before water did commence to come over there?

A. Well, as near as I can figure it out it was anywhere from 5 or 6 to 7 or 8 minutes—maybe 9 minutes—somewhere along there.

(Testimony of R. R. Young.)

Q. And when the water did commence to come how much was coming?

A. I didn't see the start of it, but about half a minute afterwards, I should judge, I observed it and there was quite a stream.

Q. It was a white looking stream as you looked at it?

A. Yes, sir; a white looking stream—white looking water coming [773] pretty heavily

Q. It wasn't brown or muddy—it looked white?

A. It wasn't brown or muddy water.

Q. It may not have been clear water but it was water that looked white when you looked at it?

A. Yes, sir.

Q. The stream would be how wide passing over the apex of the slide? A. From 3 to 4 feet.

Mr. HELLENTHAL.—Quite a stream. You may cross-examine.

Cross-examination.

(By Mr. RODEN.)

Q. As I understand, you were down here on the old Pacific Coast dock? A. Yes, sir.

Q. And your attention was first attracted by an electrical flash? A. Yes, sir.

Q. Which you saw, I think you said, a little above the slide?

A. Where the line, is,—where the power line goes.

Q. You don't know what caused the flash, do you?

A. I am pretty certain it was the tower falling and breaking the wires.

Q. All right, it was the tower falling. Now, when

(Testimony of R. R. Young.)

you saw this flash that mass was moving, wasn't it—the slide mass was then moving?

A. When I first looked up there while these flashes were taking place the buildings or earth or whatever it was, was moving.

Q. And then you stepped down as soon as you could? A. No, I waited until it all settled.

Q. All right, you waited until it all settled, and then you went down below? A. Yes, sir.

Q. And went to the scene of the slide as fast as you could, I suppose? [774]

A. No, I didn't run.

Q. But anyhow you got there and you took your position around the soda works somewhere?

A. I rested there a minute to see if it was safe to go back up in there.

Q. And by this time the fire department had got down there? A. Just arrived.

Q. You didn't see any water there?

A. No, sir.

Q. And you saw no water, I believe you said, until 6 or 7 or 8 minutes later on?

A. No, 6 or 7 or 8 minutes from the time the slide started, probably two or three minutes after the time I stepped in front of the soda works.

Q. So practically we agree on the proposition that you saw water there probably ten minutes after the slide started?. A. From 5 to 10 minutes.

Q. And the water you saw, do you know where that water came from, Mr. Young?

A. No, sir; it came out of the trees.

Q. Came out of the trees? A. Yes, sir.

(Testimony of R. R. Young.)

Q. And hit into the slide area?

A. Right square over it.

Q. Did you see the mud and material that had then flooded Goldstein's store?

A. No, I passed right by Goldstein's store—I never stopped at all.

Q. You didn't pay any attention to it?

A. No, I was further down the street.

Mr. RODEN.—That is all.

(Witness excused.) [775]

#### Testimony of George R. Jorgenson, for Defendant.

GEORGE R. JORGENSEN, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

##### Direct Examination.

(By Mr. HELLENTHAL.)

Q. State your name, Mr. Jorgenson.

A. George R. Jorgenson.

Q. Where do you live? A. Juneau.

Q. What is your occupation? A. Mechanic.

Q. Were you living here on the 2d of January 1920, the day of the slide? A. Yes, sir.

Q. Where were you when the slide happened?

A. In the Alaska Auto Supply Company.

Q. What, if anything, drew your attention to the slide? A. The noise.

Q. After hearing the noise what did *you*?

A. Went out to see what it was.

Q. Did you then observe the slide and the place

(Testimony of George R. Jorgenson.)

from which it had broken loose?

A. To a certain extent, yes.

Q. Now, was there any water running over the top of the slide, where the slide had broken loose up there at the uppermost part—at the apex?

A. I didn't notice any.

Q. Not at that time. After that you went into the slide area, I believe? A. Right away.

Q. Then did you have occasion later on—did you hear a warning about looking up or looking out?

A. Yes. [776]

Q. Did you look up to see whether there was any danger? A. I did.

Q. Did you look up then to the place where the slide had broken loose? A. Yes.

Q. Was there any water coming at that time?

A. I didn't see any.

Q. And you were looking right at it at that time?

A. Yes, sir.

Q. For that purpose. Later on did you see water coming over there? A. Yes, sir.

Q. Later on there was quite a stream?

A. Yes, sir.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Mr. RODEN.)

Q. About how long, Mr. Jorgenson, was it before you saw any water after the slide?

A. Well, I couldn't say exactly—might have 5 or 6 or 10 minutes.

Q. You were then on top of the slide practically speaking?

(Testimony of George R. Jorgenson.)

A. No, I was just about at the bottom of it,—oh, when I saw the water, you mean?

Q. Yes.

A. I was in the street.

Q. Did you see the water before you went up into the slide? A. No.

Q. As a matter of fact, you didn't see any water until after what has been called the second slide; is that true?

A. I didn't see the water until I got out on the street.

Q. But you remember somebody hollering, "Look out, there is another slide coming"?

A. Yes.

Q. And a small amount of material broke loose then? A. Yes, sir. [777]

Q. It wasn't much. Up to that time you hadn't seen any water coming?

A. Previous to that time?

Q. Up to that time, yes.

A. No, I hadn't seen any water.

Q. You were working for Jim Connors?

A. I was then.

Q. In his shop down there on Front Street?

A. Yes.

Q. When you went into the slide was the fire department down there? A. I didn't see it.

Mr. RODEN.—All right. That is all.

(Witness excused.)

**Testimony of M. S. Sutton, for Defendant.**

M. S. SUTTON, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

**Direct Examination.**

(By Mr. HELLENTHAL.)

Q. State your name. A. M. S. Sutton.

Q. Where do you live? A. On 6th Street.

Q. In Juneau? A. Yes.

Q. What is your occupation,—what do you do?

A. Architecture and building.

Q. Were you living here on the 2d of January, 1920, at the time this slide occurred? A. I was.

Q. Where were you engaged at that time,—where were you?

A. At the old Pacific Coast dock building a little tram into [778] that dock for handling coal from the steam boats.

Q. What, if anything, drew your attention to the slide? A. The noise.

Q. Now, from the point where you were working did you have an unobstructed view of the slide area?

A. I did—part of it.

Q. Did you have an unobstructed view, I mean, of the upper part of the slide area? A. Yes.

Q. After hearing the noise did you look up?

A. I did.

Q. What did you see?

A. I saw the final settlement,—I thought I saw the last end of the slide settling down.

(Testimony of M. S. Sutton.)

Q. At that time did you observe the upper part of the slide area,—the apex of it, from the point where the slide had broken loose? A. Yes.

Q. Was there any water coming over there at that time? A. No appreciable amount.

Q. How long did you look at it at that time, Mr. Sutton? A. Oh, perhaps half a minute.

Q. Was there any water coming down there over that point while you were looking? A. No.

Q. And from then on you didn't see any more of it, I believe? A. No, I didn't.

Q. You went back to your work? A. Yes.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Mr. RODEN.)

Q. Who else was down there, Mr. Sutton, at the Pacific Coast dock? [779]

A. Mr. Jackson was helping me.

Q. Do you know Jim Morrison? A. Yes.

Q. Was he down there too?

A. He was on that dock but he was on another building beyond.

Mr. RODEN.—That is all.

(Witness excused.)

**Testimony of Bruce Brown, for Defendant.**

BRUCE BROWN, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

(Testimony of Bruce Brown.)

Direct Examination.

(By Mr. HELLENTHAL.)

Q. State your name. A. Bruce Brown.

Q. Where do you live, Mr. Brown? A. Juneau.

Q. Were you living here on the 2d of January, 1920? A. I was.

Q. Where were you employed at that time?

A. Brunswick Bowling-alleys.

Q. During the forenoon of that day were you there, when the slide took place? A. I was.

Q. What, if anything, drew your attention to the slide? A. The noise.

Q. After hearing the noise of the slide what did you do? A. I went out on the street.

Q. After you got out on the street, Mr. Brown, could you see the point from which the slide had broken loose?

A. That was practically the only point I could see.

[780]

Q. That was practically the only point that you could see?

A. Outside of down at the street where it came.

Q. The buildings obscured your view of the slide from where you were? A. Yes, sir.

Q. In looking over the buildings you could see nothing but the apex from which the slide had broken loose? A. Yes, sir.

Q. Did you observe it at that time? A. I did.

Q. Was there any water coming over that apex while you were looking at it? A. No, sir.

Mr. HELLENTHAL.—You may cross-examine.

(Testimony of Bruce Brown.)

Cross-examination.

(By Mr. RODEN.)

Q. What did you see on the street, Mr. Brown?

A. At the street I seen the building of Mr. Goldstein's apartment house—it leaned over against the buildings on the street.

Q. Did you see anything on what you call Front Street or Franklin Street—that is what I mean?

A. On Front Street?

Q. Yes.

A. I seen the apartment house of Mr. Goldstein—it leaned over against the buildings which are on Front Street.

Q. Did you see any dirt or rocks or rubbish on Front Street? A. Not at that time.

Q. When did you see that?

A. I seen that perhaps 8 or 10 minutes later, I should judge.

Q. You didn't look in that direction when you first looked up, did you?

A. I went down there about 4 or 5 minutes afterwards. [781]

Q. Yes, but I mean when your attention was first called to the slide?

A. When my attention was first called to the slide did I see any dirt coming out on Front Street?

Q. Yes.

A. No, I didn't notice any dirt then.

Q. You got down there about 5 minutes afterwards?

A. I should judge about 5 minutes afterwards.

(Testimony of Bruce Brown.)

Q. What did you see down there then?

A. I stood in front of the Alaska Soda Company—at that time they gave the alarm the second slide was coming and I stayed there for a minute or two and came back and opened up my place.

Q. At the time the warning was given that the second slide was coming you didn't see any water coming down there?

A. At that time the water was coming over the apex of the slide.

Q. And that is the first time that you saw it?

A. Yes, that was the first time I saw it.

Q. Before that you hadn't noticed any water running out of Goldstein's store?

A. I didn't notice Goldstein's store before, but I noticed his store when I came back to the Alaska Soda Works—at that time there was water coming out of the door.

Q. But before the second slide when you went to the soda works there you didn't see anything coming out of Goldstein's store at all?

A. I didn't notice it at that time.

Mr. RODEN.—That is all.

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. You didn't look for it, did you?

A. I did not.

Q. It didn't come in your way? A. No.

Mr. HELLENTHAL.—That is all. [782]

(Testimony of Bruce Brown.)

Recross-examination.

(By Mr. RODEN.)

Q. You were trying to see what had happened there, weren't you?

A. I just ran down there—I was on the opposite side of the street and I ran down to where I could see the slide.

Q. Why didn't you run over on the same side of the street the slide was on?

A. That wasn't the course I took.

Q. It was a matter of precaution, wasn't it?

A. No, it wasn't a matter of precaution.

Q. You passed Goldstein's store on the other side of the street? A. Yes, sir.

Q. And you were looking to see what had happened?

A. I knew what had happened, what had slid, but I didn't notice Mr. Goldstein's building.

Q. Didn't see any slide material at all around there? A. I did when I came back.

Q. I am asking you about when you went down?

A. No, sir.

Q. Was the fire department there when you got there? A. The fire department was there, yes.

Q. Still you saw no water?

A. I didn't look for it at the time I went down there.

Q. You didn't look for water and you didn't notice anything? A. No.

Mr. RODEN.—That is all.

(Testimony of Bruce Brown.)

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. You didn't notice anything at the foot of the slide, at Goldstein's store there when you passed by it?

A. I didn't notice anything at Mr. Goldstein's store; no, sir.

Q. You looked at the apex of the slide when you were at your own store because you couldn't see anything else? A. That was all I could see, yes.

Mr. HELLENTHAL.—All right, that is all.

(Witness excused.) [783]

**Testimony of J. B. Marshall, for Defendant.**

J. B. MARSHALL, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. State your name. A. J. B. Marshall.

Q. Where do you live, Mr. Marshall?

A. Juneau.

Q. Were you in Juneau on the 2d of January, 1920? A. I was.

Q. Where were you at the time the slide occurred on that day?

A. I was sitting in the office of Judge LeFevre above the Alaska Soda Bottling Works, talking to him.

(Testimony of J. B. Marshall.)

Q. Where is that office with reference to the place where the slide occurred?

A. It is almost directly in the path of the slide if it had continued.

Q. Across the street from it? A. Yes.

Q. How was your attention drawn to the slide, Mr. Marshall?

A. The flash and the noise,—the flash of light as wires broke, I presume it was.

Q. When you looked out what did you see?

A. When I looked out I saw a mass of debris, houses and timbers and whatever there was, coming down the hill.

Q. What did you do then?

A. I first ran to the back of the building because I didn't know whether it was going to come across the street or not.

Q. After the buildings had settled where did you go?

A. As soon as I heard the buildings settle—the slide settle, I came back to the front room of Judge LeFevre's office and looked out at the slide.

Q. Did you at that time observe the top or apex from which the [784] slide had broken loose?

A. I first looked at the top for the purpose of seeing from where it had come exactly.

Q. You surveyed that portion of the slide area from which the mass had come? A. Yes.

Q. At that time was there any water running over the top or apex of the area from which the slide had broken loose? A. There was not.

(Testimony of J. B. Marshall.)

Q. How long did you remain there at that time?

A. I stayed in the building, in Judge LeFevre's office, I cannot say exactly how long, but stood there watching the situation for a little bit—it may have been a minute, I wouldn't think it was more—it wasn't long.

Q. During that time you had an unobstructed view of this top or apex of the slide? A. Yes.

Q. And during any of that time while you stood there was there any water coming over that slide area?

A. I cannot remember that I looked specifically at the top any more than once, as I first viewed the slide—I don't know that I continued to keep my eyes on that.

Q. You do, however, remember looking once at the top?

A. Definitely, when I took my first view to see where the slide had come from.

Q. You then looked definitely at the top?

A. Yes, sir.

Q. But during the remainder of the time you were sizing up the situation generally, you mean?

A. I think likely so,—I haven't any definite recollection of looking at the top any more.

Q. Where did you go from there?

A. I went down the street and was there for a little while, I don't know exactly how long. [785]

Q. Did you during that time observe the slide area?

A. Not for the purpose of seeing if there was

(Testimony of J. B. Marshall.)

any water, no, nor did I see anything of that kind.

Q. Then where did you go?

A. I went up to my office in the Goldstein building.

Q. Now, as you went up into the Goldstein building did you observe the slide area from the window?

A. Yes; when I got to the fourth floor I got out and looked at the slide area—at the apex of it.

Q. Then what, if anything, did you see in the way of water coming over the top or the apex of the slide at that time?

A. I saw what I took to be water, and went in my office and got my glasses for the purpose of looking definitely at it to see whether it was or not.

Q. That was the first time that you had seen water at that point? A. Yes, sir.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Mr. RODEN.)

Q. Did you see any water coming from the penstock that morning, Mr. Marshall?

A. I have no definite recollection on that point.

Mr. RODEN.—That is all.

(Witness excused.) [786]

**Testimony of John McNaughton, for Defendant.**

JOHN McNAUGHTON, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

(Testimony of John McNaughton.)

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Your name is John McNaughton?

A. Yes, sir.

Q. And you live in Juneau, Mr. McNaughton?

A. Yes, sir.

Q. Were you living here on January 2, 1920, the day this slide occurred? A. I was; yes.

Q. Where were you when this slide happened?

A. Down in front of the old Pacific Coast dock.

Q. From where you were in front of the old Pacific Coast dock could you see the slide,—did you have an unobstructed view of it? A. Yes, I did.

Q. You could see it. Now, what drew your attention to the slide?

A. Well, I was standing with one of the crew off the steamer "Redondo" and he attracted my attention to a flash, and I looked up and seen a building going through Gold Street, I guess, and that is all that I seen.

Q. You saw the buildings going through Gold Street and the slide settling down? A. Yes.

Q. At that time did you see the whole slide area, from where you were, where the slide had broken loose? A. Yes, I seen it.

Q. Was there any water coming over the top from which the slide had broken loose, at that time?

A. No, not that I know. [787]

Q. You then went to the slide, I believe?

A. I did; I went down to the front of the big barn, around, and went down the alley to Ferry Way

(Testimony of John McNaughton.)  
there, and went down to the house.

Q. You had a cabin in that slide area, didn't you?  
A. Yes.

Q. And you went down to look after your own affairs? A. I did.

Q. Look after your own things. After that did you see water coming over the top of that slide, some time after that, or did you not observe any?

A. I didn't take notice.

Q. After that you were looking after your own things and didn't take notice? A. No.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Mr. RODEN.)

Q. You didn't see any water coming out of the penstock, Mr. McNaughton, did you

A. I have never been up there.

Q. I mean on this occasion—on this morning?

A. No.

Mr. RODEN.—That is all.

(Witness excused.) [788]

**Testimony of Mrs. George Hayne, for Defendant.**

MRS. GEORGE HAYNE, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. You may state your name.

A. Mrs. George Hayne.

(Testimony of Mrs. George Hayne.)

Q. Where do you live? A. In Juneau.

Q. Were you living in Juneau on the 2d day of January, 1920, the day of this slide? A. I was.

Q. Where were you living in Juneau at that time?

A. Over Mr. Graves' clothing store.

Q. Over Mr. Graves' clothing store on Front Street? A. Yes, sir.

Q. In the second story? A. Yes, sir.

Q. From where you were living in the second story of that building, from your window, did you have an unobstructed view of the slide area where the slide happened? A. I did.

Q. What drew your attention to the slide on that occasion? A. Noise.

Q. After hearing the noise did you look out?

A. I did.

Q. What did you see?

A. I seen the last part of a house come down the hill.

Q. You saw the houses come down the hill?

A. Yes, sir.

Q. Did you stay there and observe the slide for a minute or so at that time? A. I did. [789]

Q. Did you see the top of the area from which the slide had broken loose—the apex—the uppermost part? A. Yes, sir.

Q. At that time was there any water running over that point? A. No.

Q. How long did you remain there at that time, Mrs. Hayne?

A. I remained there about two minutes.

(Testimony of Mrs. George Hayne.)

Q. During any of that time you were watching it, during the first couple of minutes, was there any water running over the top from where the slide had broken loose? A. No.

Q. Then where did you go?

A. I went to the back part of the house to wake the other occupants.

Q. How long did that take you?

A. A very few minutes.

Q. Did you return to the window? A. I did.

Q. When you first got back to the window was there any water running over the apex where the slide had broken loose? A. Not at first.

Q. How long after you had gotten back there before the water came over the top of the slide area?

A. About two minutes, I should judge.

Q. Then you saw water running over the top of the slide? A. Yes.

Q. The place where it had broken loose?

A. Yes.

Q. Quite a lot of water, Mrs. Hayne, was it?

A. No.

Q. But big enough so you could see it well?

A. Yes.

Mr. HELLENTHAL.—That is all. [790]

#### Cross-examination.

(By Mr. RODEN.)

Q. You had a pretty clear view of it up there, Mrs. Hayne, from your window? A. Yes.

Q. Could you see the flume?

(Testimony of Mrs. George Hayne.)

A. I don't know whether I could see the flume or not—I wasn't looking at it.

Q. Did you see the penstock?

A. I don't know what you have reference to, Mr. Roden.

Q. That was a little building at the end of the tunnel, highest up on the sidehill. A. No, sir.

Q. Did you see any water coming out of there that morning? A. Not at the time.

Q. You didn't see any water on the sidehill when the slide happened? A. Not at first.

Q. And the only time you saw any was 5 or 10 minutes later? A. Yes.

Q. You didn't see any water in any of the gulches up there that morning either, did you?

A. Not where the slide had occurred.

Q. This side of the slide a little gulch coming down there—did you see any water coming down there?

A. Yes, all along the hill, but that was further this way.

Q. You saw water coming all along the hill, did you?

A. Little streams had been running down there every day.

Q. What was the closest stream that you saw to the slide?

A. I couldn't tell you—I am not a good judge of distance.

Q. You can give us an idea—about as far as the courtroom is wide?

(Testimony of Mrs. George Hayne.)

A. Well you can see from here where the other little gulch is where the water runs down when it rains very much. [791]

Q. It was raining quite a bit this morning, wasn't it? A. Yes, it had been raining for a few days.

Q. It was raining hard just about the time of the slide, wasn't it?

A. Yes, it had been raining quite a bit before the slide.

Q. That was one of the heaviest rains you ever saw around here? A. Yes, sir.

Q. How long have you been here, Mrs. Hayne?

A. I will be here two years in Juneau.

Q. Were you here at the time of the Casey Shattuck flood?

A. No—I don't know when that occurred.

Q. Occurred in September, 1918.

A. No, I wasn't here—it will be two years in June.

Mr. RODEN.—That is all.

(Witness excused.)

Mr. HELLENTHAL.—Your Honor, it has been agreed between Mr. Roden and myself that the testimony of Mrs. Eberhart, given in the trial of Koski against the Alaska Juneau Company, may be read in this case by the stenographer, from the notes she took at that time.

Mr. RODEN.—That is all right.

The COURT.—Very well.

(Whereupon the testimony of Mrs. Eberhart was read into the record as follows:) [792]

Testimony of Mrs. Virginia Eberhart, for Defendant.

MRS. VIRGINIA EBERHART, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. You may state your name.

A. Mrs. Virginia Eberhart.

Q. Did you live in Juneau at the time this slide happened that we are inquiring about?

A. I did.

Q. Where was your home—your residence?

A. 52 Gastineau Avenue.

Q. Would that be up near where the slide happened?    A. Yes, about a block from the slide.

Q. Which direction?

A. It would be north from the slide.

Q. Gastineau Avenue is the street that runs right over the slide area, is it not?    A. Yes, sir.

Q. And you were living on that street, about a block or two blocks or a block and a half this side?

A. Yes, sir.

Q. What, if anything, drew your attention to the slide on that occasion?    A. I heard a noise.

Q. After hearing the noise what did you do?

A. I rushed out on the porch.

Q. You were in the house when you heard the noise?    A. Yes, sir.

(Testimony of Mrs. Virginia Eberhart.)

Q. And you went out on the porch?

A. Yes, sir.

Q. What did you see when you came out on the porch? [793]

A. The first thing I saw was the electric wires bobbing up and down, up and down.

Q. And what else did you see, if anything?

A. I saw people running up that direction.

Q. Then what did you do?

A. I dressed and went up.

Q. Did it take you long to get ready to get up there? A. About five minutes.

Q. Would it take that long, do you think?

A. It wasn't any longer than that, I am sure.

Q. Then you went up where the people were going? A. Yes, sir.

Q. After you got there,—did you arrive at the slide area? A. Sir?

Q. I say you got to where the slide happened?

A. Yes, sir.

Q. That was the first you saw of it, wasn't it?

A. Yes, the first I saw of it.

Q. When you got there did you observe the slide area and the ground where the slide had broken loose? A. Yes, sir.

Q. Looked the whole thing over—you were right half way up the top of the slide, weren't you?

A. Yes, sir.

Q. Did you observe the top part of the slide area, where the slide had broken loose? A. Yes, sir.

Q. At that time was there any water running

(Testimony of Mrs. Virginia Eberhart.)  
over that top area—the top of the slide?

A. No, sir.

Q. There was no water running over it?

A. No, sir.

Q. How long did you remain there?

A. Not very long. [794]

Q. Was there any running water down there while  
you were there? A. No, sir.

Q. Then you went back to your house?

A. Yes, sir.

Mr. HELLENTHAL.—That is all.

Cross-examination.

(By Mr. RUSTGARD.)

Q. Did you live on the lower side of the slide or  
on this side? A. On this side.

Q. In what house did you live there, or what  
house did you live in?

A. It was a small house on the hill—52 Gastineau  
Avenue.

Q. Whose house is it?

A. Mr. Gillan's house; I think that is the name.

Q. Tom Gillan? A. Yes, sir.

Q. And you could not see the slide from your  
house, could you? A. No, sir.

Q. And you were attracted to something by the  
noise? A. Yes, sir.

Q. And you didn't know at that time what caused  
the noise? A. No, sir.

Q. But you saw the wires in front of your house  
—that is the telephone wires? A. Yes, sir.

(Testimony of Mrs. Virginia Eberhart.)

Q. And light wires—you saw them bobbing up and down? A. Yes, sir.

Q. Did you hear the fire-bell? A. I did.

Q. That was how long after you heard the noise?

A. Very shortly.

Q. Well, then, you went in and dressed? [795]

A. Yes, sir.

Q. How long do you suppose it took you to dress?

A. It wasn't any more than five minutes,—it was hardly 5 minutes.

Q. Where did you intend to go and look for the noise.

A. I saw where the people were running towards and I went up there to where they were.

Q. You saw people running? A. Yes, sir.

Q. Up that direction where the slide was?

A. Yes, sir.

Q. There was general excitement, wasn't there?

A. Yes, sir.

Q. And you joined in the excitement?

A. Yes, sir.

Q. And you also went over to look at the slide?

A. Yes, sir.

Q. That was at the end of the street?

A. Yes, sir.

Q. The plank street there? A. Yes, sir.

Q. Now, at that time the houses had slid through the street down towards Front Street and the stairs there? A. Yes, sir.

Q. And people had commenced to dig out the victims? A. I don't know.

(Testimony of R. M. Keeney.)

be soot from the chimneys that I saw give way, and I saw the top of the buildings on the slide, and the top of the Goldstein apartments I think, I am not positive.

Q. Your view was such that you could not see the buildings where they stood but you could see the top where the slide had broken loose?

A. I think I saw the Goldstein apartments but I am not positive.

Q. Whether you observed the top from which the slide had broken loose? A. Yes, sir. [798]

Q. Was there any water coming over there at that time—over that top?

A. Not over the very top of the slide that I can recall, there was no water.

Q. No water at that time? A. No.

Q. Then, Mr. Keeney, where did you go?

A. I went through the Pacific Coast building down the passage over to the ferry landing and over to the slide.

Q. On your way down could you observe the top from where the slide had broken loose?

A. Yes, sir.

Q. Was there any water coming down there at that time?

A. Over the apex of the slide?

Q. Yes.

A. I cannot recollect any.

Q. If there had been any you could recall it, couldn't you? A. I think I would.

Q. You didn't see it?

(Testimony of R. M. Keeney.)

A. Not that I can remember.

Q. After that, Mr. Keeney, you went where—to the slide?

A. I went to the slide direct from that Pacific Coast dock.

Q. Then how long after the slide happened was it when you first saw water coming over the apex of the slide, the point from where the slide had broken loose?

A. Oh, roughly guessing, between 15 and 20 minutes, I guess.

Q. Roughly guessing you put it at 15 to 20 minutes? A. I would put it at that.

Q. Where were you when you first saw it?

A. The first time I saw water coming over the apex of the slide I was in front of the Alaska Soda Works.

Q. At that time when you first saw it there was quite a volume coming, wasn't there?

A. Yes; earth and water and mud, that is what attracted my [799] attention first.

Q. Now, Mr. Keeney, you have lived in Juneau quite a number of years, I believe?

A. Yes, sir.

Q. Did you witness, or do you know of any other slides that happened in that vicinity?

A. I never witnessed any of them in action—I have seen them after they slid down.

Q. What slides did you see in that same vicinity after they had slid down—what slides did you observe?

(Testimony of R. M. Keeney.)

A. There was a slide there in 19,—it would be either 1902 or '3, a little this side of that one; came down the gulch I would judge 200 feet or 250 feet this side of that one, maybe more, maybe less—I wouldn't say positively. That slide I didn't see—if I remember right it came in the night—I wouldn't be positive, but we was up there shortly after it came. And I saw the slide that came down back of the Gastineau—I didn't see that in action but I saw it a few minutes after it came down.

Q. There were two slides back of the Gastineau, weren't there?

A. I don't think I was in town at the time of one of the Gastineau slides—if I was I don't recall it.

Q. That was the early Gastineau slide?

A. Yes.

Q. You recall the slide that occurred there—

A. I recall the slide that occurred there at the time of the Casey-Shattuck flood.

Q. You recall that slide?

A. Yes, I recall that slide.

Q. You didn't witness that slide?

A. I didn't witness the slide—that is, I witnessed the slide, you might say, within ten minutes after it came down.

Q. Where were you at the time the slide happened at the Gastineau? [800]

A. I was in the Consumers' Protective Association.

Q. Did you hear it from there?

A. No, I didn't hear it—my attention was called

(Testimony of R. M. Keeney.)

to it and I looked over on the sidehill and could see where it came from.

Q. Did you immediately go down to where it came from? A. I did.

Q. There was no flume above that slide, was there? A. None that I am aware of.

Q. Was there any water coming out of the Gaspineau Hotel at the time you got there?

A. Yes, sir.

Q. How much?

A. I described it once as a sluice-head—that is about as near as I could come to it.

Q. Where was it coming from?

A. From the hill—down the steps.

Q. Was there any water coming down the alley there?

A. I couldn't say positively but I think it was coming from different places all through there.

Q. Was there any water coming through Wills' store? A. I think there was.

Q. How deep was the water coming through Wills' store? A. I didn't go in—I couldn't say.

Q. There was quite a stream running there, wasn't there? A. I should think so.

Q. Ankle deep, it could be called?

A. I would call it that, yes.

Q. You would call it ankle deep, the water running through Wills' store? A. Yes.

Q. Now, do you know of any other slides on the hillside, Mr. Keeney, during the last 15 or 20 years, up in that neighborhood,—do you remember the one

(Testimony of R. M. Keeney.)

behind Forrest's machine-shop?

A. That slide, my recollection of that, I don't recall seeing [801] that any more than I think I saw them wheeling dirt through the shop, wheeling it away,—I think I remember that, but I don't think I went back of the building.

Q. Do you remember one that came down on the Carroll wharf? A. Yes, sir.

Q. That was when, Mr. Keeney?

A. That was probably 1899 or 1900, something like that, or 1901, I couldn't say positively.

Q. That was about how far this side of where this slide occurred that is now the subject of inquiry?

A. There was two came down by the Carroll wharf. There was one came on the other side of the Carroll wharf, and one on this side,—as I remember they were small slides—not very extensive.

Q. One took down several cabins?

A. That was on this side.

Q. How many cabins did it take down, do you recall. A. I don't recall how many it took down.

Mr. HELLENTHAL.— You may cross-examine.

Cross-examination.

(By Mr. RODEN.)

Q. That slide came down a little gulch, Mr. Keeney, didn't it?

A. It came down,—I couldn't say there was a gulch there—there is a little stream comes down there.

Q. A depression in the mountain-side? A. Yes.

(Testimony of R. M. Keeney.)

Q. And that is also the case in the other slide that you described, you didn't give it any name,—the slide that happened in 1902 or '3?

A. That came down in a gulch down this side of Mr. Goldstein's store.

Q. And when the slide came down back of the Gastineau Hotel, that was the heaviest rain you ever knew in the city of Juneau?

A. That is the heaviest rain I know of right inside of the city [802] of Juneau limits—of course we have had heavier—

Q. That was the heaviest rainfall that you can recall? A. Yes, I guess so.

Q. How long have you been around here, Mr. Keeney? A. 1898,—23 years.

Mr. RODEN.—That is all.

(Witness excused.)

#### **Testimony of Robert Kennedy, for Defendant.**

ROBERT KENNEDY, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

##### **Direct Examination.**

(By Mr. HELLENTHAL.)

Q. You may state your name.

A. Robert Kennedy.

Q. Where do you live? A. Juneau.

Q. How long have you lived here?

A. Since 1914.

(Testimony of Robert Kennedy.)

Q. Do you know where the Koski house formerly stood? A. Yes, sir.

Q. Did you have occasion while the Koski house was standing, before this slide happened, to go to the Koski house? A. Yes, sir.

Q. Were you behind the Koski house?

A. Yes, sir.

Q. Where you could observe the excavation?

A. Yes, sir.

Q. What, if any, excavation was there behind the Koski house, Mr. Kennedy, when you were there before the slide?

A. Well, there was a platform back of the Koski house, runs about—oh, I should say two-thirds of the length of the [803] Koski house, and I think it is 4 or 5 feet wide, this platform, and there is a little abutment of loose rock about that high—I should think 2 feet.

Q. On the back end?

A. On the back end of the house, yes.

Q. And the bank rose up from that platform?

A. Yes.

Q. Or cut in the bank? A. Yes.

Q. How high did it rise, Mr. Kennedy?

A. Oh, I would think it would be anywhere from 12 to 14 or 16 feet—along that.

Q. You wouldn't state the exact distance, but along about that distance?

A. Somewhere along that.

Q. It was higher at the side towards the Bach house?

(Testimony of Robert Kennedy.)

A. Next to the mill—the Alaska Juneau mill.

Q. In that direction the bank was the highest?

A. Yes, sir.

Q. And then the cut came down to where it met the gulch,—I believe there was a gulch emptying in there, wasn't there?

A. There was a little coalshed or something right at the head of the stairs as you go up the steps—I don't know just where the gulch did hit the house.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Mr. RODEN.)

Q. You say that cut was 12 or 14 or 16 feet deep or long?

A. From the top of this curve to the top of the bank it would be 12 or 14 or 16 feet long—in there some place.

Q. Wouldn't it be 20 feet, or 22 feet?

A. No, it wasn't that much.

Q. It wasn't that much? A. No. [804]

Q. Well, 18?

A. No, I don't think it was,—I think 16 feet would be the very extreme limit of it.

Mr. RODEN.—That is all.

(Witness excused.)

**Testimony of Amos Benson, for Defendant.**

AMOS BENSON, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

(Testimony of Amos Benson.)

Direct Examination.

(By Mr. HELLENTHAL.)

Q. You may state your name.

A. Amos Benson.

Q. Where do you live? A. I live on 4th street.

Q. You live in Juneau? A. Yes.

Q. How long have you lived in Juneau?

A. Oh, about 18 years.

Q. Do you know where the Koski house used to stand before the slide? A. Yes.

Q. Did you have occasion to go to the Koski house shortly before the slide?

A. I used to haul the ashes and garbage from the Koski house—from all over.

Q. You were engaged in the business of hauling away the ashes at that time?

A. I was in the transfer business at the time, hauling ashes.

Q. In hauling the ashes where did you haul the ashes from? A. From the Koski house.

Q. Where did the ash can used to stand? [805]

A. Back of the house.

Q. Did you observe the bank that was behind the house,—the cut that had been made there?

A. Well, there was a cut there—I couldn't say how it was—there was a cut there on the upper end; the lower end it was down to nothing; it was sloping down like that.

Q. There was no cut down where the gulch was?

A. Not very much.

(Testimony of Amos Benson.)

Q. How high was it at the upper end, where it was highest?

A. I couldn't say—I never measured it—I couldn't say how high it was.

Q. How high would you estimate it, Mr. Benson,—about how high would you say it was?

A. About 10 or 12 feet high, I would say, at the upper end—it looked that way to me.

Q. The ash can that you emptied, was that ever placed so close to the cut that the dirt could slough into it? A. Yes; it was a few times.

Q. What happened when the ash barrel was placed so near the edge of the cut that the dirt could slough into it?

A. It would get full of dirt and it would have to stand because I couldn't handle it.

Q. You couldn't take it because so much dirt was in it?

A. Sometimes I dumped it out and shoveled the garbage in.

Q. The dirt sloughed right off the bank into the ash barrel?

A. Yes, like any bank would sometimes slough off,—any bank will do the same thing.

Q. And there was so much of it that sometimes you couldn't carry the ash barrel away?

A. It wasn't always that way—there was only a few times it happened.

Q. There was only a few times that there was so much dirt which had sloughed into the barrel that you could not carry the barrel away?

(Testimony of Amos Benson.)

A. Yes. [806]

Q. The barrel did not usually stand against the bank?

A. No; stand out near the house—put it on the other side when there was much ashes up there.

Mr. HELLENTHAL.—That is all.

Cross-examination.

(By Mr. RODEN.)

Q. You have talked that over pretty well with Clauson, haven't you?

A. I wasn't saying anything to Clauson except about my finger here.

Q. And Tom McDonald? A. Who is that?

Q. Don't you know Tom—haven't you ever talked to him? A. No—Tom McDonald.

Q. How do you happen to be here?

A. I was called to come up.

Q. Who called you up?

A. I don't know the man.

Q. What does he look like?

A. Kind of a heavy set fellow.

Q. A tall man, isn't he? A. A heavy set man.

Q. Did he have a collar on?

A. I don't know whether he had a collar or not. He came to my house and asked me to come up to the courthouse, is all I know.

Mr. RODEN.—That is all.

(Witness excused.) [807]

**Testimony of John Reck, for Defendant.**

JOHN RECK, called as a witness on behalf of the defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

**Direct Examination.**

(By Mr. HELLENTHAL.)

Q. State your name. A. John Reck.

Q. Where do you live, Mr. Reck? A. Juneau.

Q. Do you know where the Koski house used to stand? A. Yes, sir.

Q. Were you ever behind the Koski house?

A. Yes, sir; I have been around there several times.

Q. Can you tell me whether there was any cut or excavation behind the house where the house stood? A. There was.

Q. How deep was that cut at its deepest place, approximately?

A. Well, I would say it was from 10 to 15 feet,—I didn't closely observe it—it was cut off—kind of a cut off—I would say anyway from 10 to 15 feet. It was over 10, but I wouldn't want to be positive of the depth of it.

Q. That was at its highest point, then it came down towards the gulch where there was practically no cut? A. Yes.

Mr. HELLENTHAL.—That is all.

(Testimony of John Reck.)

## Cross-examination.

(By Mr. RODEN.)

Q. You are president of Mr. Bradley's bank down here?

A. I am president of the First National Bank.

Q. He is a stockholder in it—he owns some stock in it, don't he? A. Yes.

Mr. RODEN.—That is all. [808]

Q. (By Mr. HELLENTHAL.) You also own some stock in it, don't you? A. Yes, sir.

Q. (By Mr. HELLENTHAL.) And a lot of other people own stock in it? A. Yes.

Mr. HELLENTHAL.—That is all.

(Witness excused.)

**Testimony of James E. Higgins, for Defendant  
(Recalled).**

JAMES E. HIGGINS, recalled as a witness on behalf of the defendant, having been previously duly sworn, testified as follows:

## Direct Examination.

(By Mr. HELLENTHAL.)

Q. Mr. Higgins, after the slide was over what condition were your wires in at the point where they crossed the Gaspé wires?

A. Our high line was shorted caused by the Gaspé high line laying down over it.

Q. Were your wires burned off?

A. Our wires were not burned off, but the Gaspé wires, two of them were burned off.

(Testimony of W. B. Hargraves.)

Q. They were burned at that point? A. Yes.

Mr. HELLENTHAL.—That is all.

Mr. RODEN.—No questions.

(Witness excused.) [809]

**Testimony of W. B. Hargraves, for Defendant  
(Recalled).**

W. B. HARGRAVES, recalled as a witness on behalf of the defendant, having previously been duly sworn, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. These slide areas that you have indicated on your map in both cases, both the one behind the Koski house and the one near the mill, do the areas marked on your map represent the chunk that broke loose, or the ground covered by the muck?

A. As far as could determine it represents the area of the mass that broke loose.

Q. And the debris in both cases lies below the point that you have indicated as slide area?

A. Yes, sir.

Q. You haven't made any attempt to show on your map the places where the slide debris laid?

A. No, sir.

Q. That is true in both of these slides?

A. Yes, sir.

Q. Coming now to this trommel screen, you have an arrow there pointing to where it says, "Spout to ground 6 feet"—does that arrow indicate the direction of the spout?

(Testimony of W. B Hargraves.)

A. No; that merely points to the place where the spout is.

Q. Which direction did the spout point—does that show on the map?

A. Yes, that is marked on the map.

Q. Can you place an arrow right where the spout is, indicating the direction which the spout pointed?

(Witness does so.)

Q. That shows it, does it?

A. Yes, sir, approximately.

Mr. HELLENTHAL.—That is all.

Mr. RODEN.—That is all.

(Witness excused.) [810]

Mr. HELLENTHAL.—Now, your Honor, Mr. Roden has agreed with me that the testimony of Mr. Summers, in rebuttal, given at the previous trial of Mary Koski against the Alaska Juneau Company may be read by the stenographer.

The COURT.—Very well.

(Whereupon the testimony of Mr. Summers was read into the record as follows:)

**Testimony of M. B. Summers, for Plaintiff  
(Recalled in Rebuttal).**

M. B. SUMMERS, recalled as a witness on behalf of the plaintiff, having previously been duly sworn, testified in rebuttal as follows:

Direct Examination.

(By Mr. RUSTGARD.)

Q. Mr. Summers, you are in charge, as you have

(Testimony of M. B. Summers.)

testified already I believe, of the United States Meteorological station at this place?

A. Yes, sir.

Q. And you have the records of that office in your possession? A. Yes, sir.

Q. You have the records of the observations taken by your station during the latter part of December, 1919? A. Yes.

Q. Will you state from your records the amount of snow on the ground at 8 P. M. December 25th to January 9th?

A. 8 P. M. December 25th there was a trace in spots—that is, an amount too small to measure; on the 26th a trace; 27th a trace; 28th,  $3/10$ ths of an inch; 29th,  $3/10$  of an inch; 30th,  $1-7/10$  inches; 31st, 4.3 inches; January 1st, 1920, none; 2d, none; 3d, none; 4th,  $1-1/10$  inches; 5th,  $1-8/10$  inches; 6th, none; 7th, none; 8th, none; 9th, none.

Q. This, Mr. Summers represents the snow of the ground at 8 o'clock in the evening of each of those days? A. Yes; the average depth. [811]

Q. It doesn't represent the snowfall?

A. No, sir.

Q. The snowfall from your records shows in the data introduced by Mr. Hellenthal, I believe?

A. Well, for some of those dates. I don't know whether those dates coincide in every particular with these but I know they were given for some of them.

Q. Now, will you also state from your records the amount of the precipitation, that is, including rain

(Testimony of M. B. Summers.)

and melted snow, from and including January 2d to and including January 8th, 1920?

The COURT.—Let me ask you, so as to get your theory, what relevancy has the precipitation after the slide—

Mr. RUSTGARD.—The relevancy comes in here. They introduced a number of pictures taken on the 7th and introduced evidence showing that that is the way it looked on the 2d of January; and we want to show that the rainfall up to and including the 7th of January was such that when those pictures were taken the situation would look entirely different from the way it looked on the 2d. They showed the pictures of January 7th for the purpose of showing how the water must have come down on the 2d, and I want to show now that on the 2d up to 11 o'clock the rainfall during the preceding 24 hours was only about half an inch— $66/100$  of an inch—while at the time the pictures were taken, during those 24 hours, the rainfall was  $4\frac{1}{4}$  inches.

The COURT.—The object then is simply to impeach the pictures?

Mr. RUSTGARD.—Yes.

The COURT.—Very well.

A. The precipitation in the 24 hours ending at midnight of the 3d was  $38/100$  of an inch; on the 4th,  $14/100$  of an inch; on the 5th,  $80/100$  of an inch; on the 6th,  $2\frac{5}{100}$  of an inch; on the 7th,  $4\frac{25}{100}$  inches; on the 8th,  $25/100$  of an inch; and on the 9th,  $3/100$  of an inch. [812]

Q. Now, will you also state from your record the

(Testimony of M. B. Summers.)

amount of the precipitation from September 21st to the 27th, 1918?

A. September 21st, none; 22d, trace, amount too small to measure; 23, 76/100 of an inch; 24th, 3/100 of an inch; 25th, 2 46/100 inches; 26th, 4 95/100 inches; 27th, 1/100 of an inch.

Q. Will you also give the maximum amount that fell in any 24 consecutive hours during the 25 and 26th of September, 1918?

A. It was 5 inches and 54/100 from 5:34 P. M. on the 25th to 5:34 P. M. on the 26th.

Q. Will you also give the maximum amount in any 24 hours in January, 1920?

A. Four inches and 25/100 from midnight to midnight of the 7th. It so happened that that precipitation, the maximum amount, ended with the calendar day, midnight—just a peculiar coincidence.

Q. Will you state the amount of rainfall in the 24 hours ending at 11 A. M. January 2d, 1920?

A. January 2d, 1920, 66/100 of an inch in the 24 hours ending at 11 A. M.

Q. This statement which you have certified to here corresponds, I notice, with the figures you have read off to the Court and jury at the present time? A. It does.

Q. It was made by you and taken from your books? A. It has been, yes, sir.

Mr. RUSTGARD.—For the convenience of the Court and jury I now offer this certificate in evidence.

Mr. HELLENTHAL.—No objection.

(Testimony of M. B. Summers.)

(Whereupon said certificate was received in evidence and marked as Plaintiff's Exhibit "S" in the case of Koski vs. Alaska Juneau Gold Mining Company.)

Q. Now, will you turn to your books and state what was the [813] rainfall during the 24 hours ending at 3 o'clock in the afternoon of January 7, 1920?

A. Four inches and 9/100 in the 24 hours ending 3 P. M. of the 7th of January.

Q. Mr. Summers, referring to your certified statement marked in the records as Defendant's Exhibit No. 14, I ask you to state whether or not the figures giving the precipitation include both the rainfall and the melting snow during the period mentioned?

A. They do; in every instance where the term precipitation is used in weather records it always means rain and melted snow—this is, if there was any snow.

Mr. RUSTGARD.—That is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. That means, Mr. Summers, melted snow at the point where the gage is? A. Yes, sir.

Q. At the gage point? A. Yes, sir.

Q. And has no reference to snow that might lie on the hills? Upon that subject you have no information?

A. Well, the depth of snow on the ground would be covered by that in a general way.

Q. In a general way? A. Yes, sir.

(Testimony of M. B. Summers.)

Q. But as far as the precipitation records show, they simply show the amount of melted snow at the point of the gage? A. Yes.

Q. And according to your records there was no snow on the ground on the 1st and 2d of January?

A. No.

Q. By that you mean to say that there was no snow at the gage? [814]

A. No, around the gage—in the immediate vicinity. We make our snowfall measurements in the immediate vicinity of the office,—the lot over here and the lot in front of the office. We aim to get the depth in the immediate vicinity. We do not, however get the amount of snow on the mountain-sides.

Q. You have to estimate those things, don't you, Mr. Summers?

A. They have to be estimated when they get down to a trace.

Q. You have to estimate them, don't you—you don't know what was on the mountain-side?

A. No, we don't take cognizance of the amount of snow on the mountain-sides. That would be an impossibility, because in the gullies there is snow in the summer. In slopes that are on a level the snow is gone very much earlier.

Q. Your records there with reference to the snow that lies on the ground are taken within the vicinity of the gage?

A. Yes, sir; within a few blocks.

Q. And where your records show that there was

(Testimony of M. B. Summers.)

no snow on the ground, then there would be no melting snow water calculated in your precipitation?

A. Necessarily so, Mr. Hellenthal, because you could have, say 2 inches of snow in the morning and that would melt by 8 P. M. Our measurements of snow on the ground are made at 8 P. M. only, and if you had 2 inches of snow at 8 o'clock in the morning and that melted before 8 P. M. and didn't show on the ground, but yet there was snowfall on the ground that day—

Q. How much was there on the 31st of December at 8 P. M.? A. Four 3/10 inches.

Q. That had melted away by 8 P. M. on January 1st?

A. Yes; there was 6 9/10 inches that fell during the 24 hours ending at 8 P. M. of the 31st, but it melted down to 4 3/10 by 8 P. M.

Q. Now, referring to your records, there was a snowfall on the 30th of 1 4/10 inches? A. Yes.  
[815]

Q. And on the 31st a snowfall of 6 9/10 inches?

A. Yes, sir.

Q. That would be a snowfall of 9 inches?

A. Eight 3/10 inches.

Q. Yes, that is right, 8 3/10 inches all told?

A. Yes.

Q. And according to your records that had melted down to nothing by 11 o'clock on January 2d?

A. I don't know about 11 o'clock.

(Testimony of M. B. Summers.)

Q. Well, by 8 o'clock January 1st it had melted down to nothing?

A. By 8 P. M. of January 1st, yes, sir.

Q. That snow had gone?

A. That snow had gone.

Q. And by saying it had gone it means it had melted?

A. It had melted by the rain and high temperatures.

Q. And your records would not indicate that there were not patches of snow left on the hillsides?

A. No, they would not.

Q. Referring to Plaintiff's Exhibit "R," those patches that show on that hillside as they are there would not be calculated in your records?

A. They might and they might not, Mr. Hellenthal, because, as I said, we take no cognizance in our records of the condition of snow on the hillsides. If this snow that you find on the hillside in this particular picture occurred say just a short time before 8 P. M. on a certain day and there had been no snow on the ground previous, the chances are that the amount shown in this picture here would be about the same as we would measure on the level here in town if it hadn't had an opportunity to melt in the rain,—I don't know when this picture was taken.

Q. This was supposed to have been taken on January 2d, 1920. What I am referring to is to show that your records do not refer to that particular condition? [816] A. No.

(Testimony of M. B. Summers.)

Q. That is what I am trying to get at; and there was no snowfall on the 1st or 2d?

A. No, sir; no snowfall nor none on the ground.

Q. So that whatever snow there is in that picture, if it was still in existence on the 2d, is a holdover of what fell on the 30th and 31st?

A. Well, it would depend on when it was taken. When was it supposed to have been taken?

Q. January 2d. Whatever snow there was on the hillside at that time was a holdover from that time, anyhow?

A. Yes; as I said in my testimony, there was an inch and 1/10 on the 4th, and an inch and 8/10 on the 5th.

Q. Yes, that was afterwards? A. Yes.

Q. After the 2d you got no snow again—

A. Until the 4th and 5th.

Q. Now, referring to the 7th, do you know what the weather was in the morning or forenoon of the 7th?

A. Yes, it was raining rather heavily.

Q. Rained rather heavily in the forenoon?

A. Yes; I can give you the hours and the amounts if you wish.

Q. All I want is, it rained rather heavily all that day, Mr. Summers, you would say? A. Yes.

Q. In the forenoon of the 2d did it rain heavily—fairly so? A. Just a moderate rain.

Q. A constant continuous rain during the day?

A. Yes, it was continuous.

(Testimony of M. B. Summers.)

Q. The rain fell just gradually throughout the period?

A. It was what might be called a little heavier than a normal Juneau rainfall.

Q. It was heavier than a normal Juneau rainfall, and it was continuous throughout the forenoon? [817]

A. Continuous—the maximum amount in any one hour was .10 inch at the hour ending at noon on the 2d.

Q. What time on the 5th did the snow fall, Mr. Summers?

A. It began in the early morning and ended at 9:50 A. M., and then there was rain and snow mixed; in the forenoon, the temperature above freezing—the temperature around 36.

Q. About 9 o'clock in the morning it quit snowing and went to raining, is that the idea?

A. Yes, sir; the snow ended at 9:50 A. M., and then rain began at 10:10 A. M., and at 1:43 P. M. it was rain and snow mixed; that continued until 5:40, and then it turned to rain again.

Q. On the 1st, Mr. Summers, the day before the 2d, was the rain continuous during the day?

A. Yes; but it became very light at 4 P. M.; after 4 P. M. there was only .02 of an inch up to midnight,—from 4 P. M. it was only .02 of an inch.

Q. But it was continuous throughout the period?

A. Yes.

Q. Rained all the time?

A. We would take no account of intervals of 15

(Testimony of M. B. Summers.)

minutes. A cessation of 15 minutes we would not take any cognizance of.

Q. It is what you would call a steady rain?

A. Yes.

Mr. HELLENTHAL.—That is all.

Redirect Examination.

(By Mr. RUSTGARD.)

Q. And the entire amount from 11 o'clock of the 1st to 11 o'clock of the 2d was .66 inch?

A. Yes, sir.

Q. Now, let me ask you in regard to snow, in determining whether there is snow on the ground you take into consideration the appearance of the Government lot? [818]

A. Yes, that lot and other lots around—the lot immediately in front of our place, Behrend's lot there.

Mr. RUSTGARD.—That is all.

(Witness excused.)

Mr. RODEN.—I will ask that the certificate marked exhibit "S" in the former trial be introduced in this case.

Mr. HELLENTHAL.—All right.

(Whereupon said certificate was received in evidence and marked Plaintiff's Exhibit "P.")

Mr. HELLENTHAL.—With that we will close our case except that I wish to make the request that the jury be taken up to view the premises—to see the hillside above where the slide took place, and where the water is supposed to have come from, the hog-

back and the ridges, and the situation up on the ground; and in that connection I wish to say that we will supply the Court and jury with a tram to go up there, as we did on a former occasion. Let it be understood that we are not doing that in any way to make the Court and jury our guests, but simply to take them up there to see the premises. The matter of costs does not amount to anything—we are just doing it as part of the presentation of the case, without any obligations attached to it.

The COURT.—The statute says that the Court shall point out certain things to the jury or that the Court shall appoint some one to do it.

Mr. HELLENTHAL.—I would suggest that Mr. Dudley, who is a surveyor connected with the plaintiff in the case, and Mr. Hargraves go up with the jury, with the understanding that they do not discuss the case but that they merely point out things on the ground.

Mr. RODEN.—There is nothing to be seen up there now as it was on the 2d day of January, 1920—cannot find even the location [819] of the penstock any more.

Mr. HELLENTHAL.—I think I can put Mr. Bradley on the stand and he can tell just where the penstock stood so that they can find it. I would like very much to have the jury see the place—what can be seen of it.

The COURT.—I think the jury ought to go and see the place myself, and I think they should understand wherein the appearance differs now from

what it did then—that is to say, they should be told where the penstock was—that should be definitely fixed, about where the penstock was,—I think they should see the slide itself; I think they should see the portal and the gullies and the hog-back and the snowshed. I do not think I will let them go, however, except that the Court, the counsel on each side and the stenographer go along.

Mr. RODEN.—Now, may it please the Court, what amount the gully that was up there about 15 months ago? What evidence would there be up there of that now—the gully that was cut down, as we claim—the gully below the penstock. They can see that from the street—they can see just as much from the street as they can see by climbing up the sidehill.

The COURT.—I do not want to try this case over again, gentlemen; I do not want to leave out anything that would make a jury come to a conclusion one way or the other, and in a case of this kind it seems to me that a view of the premises is proper. I think, however, if there is no objection, that I will ask you gentlemen to vacate the courtroom—I want to say something to the jury myself. If there is any objection make it known.

Mr. HELLENTHAL.—You mean any objection to the Court talking to the jury?

The COURT.—Yes.

Mr. HELLENTHAL.—None whatever, your Honor.

Mr. RODEN.—There is one more statement I

want to make to the [820] Court—as far as seeing that hill is concerned, the hill has been dynamited down since that time—the whole situation has been changed, I am informed.

The COURT.—You mean since the last trial?

Mr. RODEN.—No, since the slide occurred on January 2d.

Mr. HELLENTHAL.—The jury can judge for themselves.

The COURT.—Are you speaking of something that you know, or is it just rumor?

Mr. RODEN.—As near as I know—I heard blasting myself, and it isn't the same. If conditions were the same now as they existed then it would be all right.

The COURT.—Of course the jury must understand; if the conditions are not the same now they must know wherein they differ.

Mr. RODEN.—We will produce the witness who says that the whole side of the hill has been dynamited down.

The COURT.—Let me know who told you.

Mr. RODEN.—Now?

The COURT.—No. Step outside now.

(Whereupon all persons in the courtroom, except the Court, the jury and the stenographer, retired from the courtroom.)

The COURT.—What I want to know, gentlemen of the jury, is whether or not you, or any of you, think that it would elucidate matters—give you a better impression of how things were there, and

enable you with more certainty to come to a verdict in the case one way or the other, if you go down and look over the ground?

Mr. HARLAND.—You want an expression of our opinion?

The COURT.—Yes, if you will be careful not to intimate one way or the other what your opinion is on the merits of the case. All I want is your opinion about going down there.

Mr. HARLAND.—Of course, for my part, I have been up there at different times taking a walk, and I have a knowledge, I think, of how the buildings were there from walking past—just a general knowledge of how they were situated there before.  
[821]

The COURT.—The question I asked is whether or not you think that by going down there now and looking over the ground it would assist you in coming to a verdict?

Mr. HARLAND.—No, not in my case.

Mr. VUKOVICH.—I think the same thing.

Mr. KARSTEN.—It is mostly about the slide and things have changed around there and it wouldn't be the same. I don't think it would have any bearing at all.

Mr. KRUGNESS.—It might help a little—I never was up there in my life—I never was up above the Koski house in my life.

Mr. MORRIS.—I don't know one way or the other.

Mr. BROITZMAN.—I am acquainted with the

situation up there—I worked for the company once upon a time, about 4 years ago.

Mr. SMITH.—I don't think it would make any difference.

Mr. COVE.—I don't think it would help any in my case.

Mr. FAGERSON.—I think we have had a very clear understanding from all the evidence for us to come to a conclusion.

Mr. WILSON.—Same here.

Mr. ELLENGEN.—It has been so long since the slide occurred I do not think it would be necessary for me.

Mr. KANE.—I don't think it would be necessary for me to go up.

The COURT.—I did not quite understand you, Mr. Karsten.

Mr. KARSTEN.—It has been so long since the slide occurred there wouldn't be any evidence—they have changed things around.

The COURT.—Well, I do not know that it would help you very much. If after you begin your deliberations you think it might help you to arrive at a verdict I may send you down as I did the other jury. I will not send you down now, however,—I may later.

(Whereupon counsel returned into court.)

Mr. HELLENTHAL.—We will rest, only we want the jury to go down and see the premises.

Defendant rests.

(Whereupon court adjourned until 10 A. M. the following morning.) [822]

MORNING SESSION.

April 2, 1921, 10 A. M.

REBUTTAL.

Testimony of **M. B. Summers**, for Plaintiff (in Rebuttal).

M. B. SUMMERS, called as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows, in rebuttal:

Direct Examination.

(By Mr. RODEN.)

Q. (Mr. SUMMERS.) I wish you would state the official position you occupy.

A. I am in charge of the local office of the weather bureau.

Q. As such have you in your possession the records that have been kept by the bureau since it was established here in the town of Juneau?

A. Yes, sir.

Q. When was that, Mr. Summers?

A. The regular station was established on the 1st of January, 1917.

Q. Have you also any records in your possession that were kept concerning the precipitation in the town of Juneau prior to that time?

A. We have the monthly values, yes, and certain of the daily values.

Q. By whom were they kept, Mr. Summers?

A. Various persons—Mr. McLean, Mr. Reed, Mr. Sharick and I forgot some of the others.

(Testimony of M. B. Summers.)

Q. From those records, Mr. Summers, can you tell on which day the high precipitation took place in the town of Juneau?

A. Only for certain parts of them. The records kept by Mr. Sharick are not complete as to daily amounts. We cannot give the greatest amount in 24 hours during the period that he kept the records, but we can from most of the other records prior to the time the weather bureau was established. [823]

Q. Now, I wish you would take your records and tell us when the highest precipitation in January was that you have any record of.

A. The highest was in 1918—September 25th and 26th.

Q. What was the precipitation?

A. 5 inches and 54/100.

Q. That was on September 26, 1918?

A. 25th and 26th.

Q. The 25th and the 26th, yes. When was the second highest precipitation?

A. In January, 1920, on the 7th.

Q. On the 7th day of January, 1920?

A. 4 inches and 25/100.

Q. When was the next highest precipitation?

A. September 7, 1902.

Q. What was it? A. 4 inches.

Q. When was the next?

A. On August 21, 1891, 3 inches and 95/100.

Q. And when was the fifth?

A. That would be the fifth.

(Testimony of M. B. Summers.)

Q. Did you mention the fourth highest?

A. The first was 5.54; the second, 4.25; the third, 4 inches; the fourth—I beg your pardon, I overlooked that one—that was November 5th and 6th, 1918, 3.98; then the fifth was August 21, 1891, 3.95.

Q. So the highest precipitation your records show was on the 7th of January, 1920?

A. No, September 25th and 26th, 1918.

Q. That was the highest—I mean the second highest? A. Yes, sir.

Q. The second highest was January 7, 1920?

A. Yes. I might state that these excessive precipitations do not include the record kept by Mr. Sharick. There may have [824] been some precipitation during that record that equalled some of these amounts—we have no way of telling.

Q. Now, on the 7th day of January, 1920, during what portion of the day was the highest precipitation?

A. The heaviest rainfall was from 5 o'clock in the morning to 3 in the afternoon.

Q. How much water fell during that time?

A. 2 inches and 15/100.

Q. I would like for you to look at your records for December 30th and 31st, 1919, and January 1st and January 2d, 1920—

Mr. HELLENTHAL.—I guess, your Honor, that Mr. Summers' complete record for those days is already before the Court and has been read in evidence.

(Testimony of M. B. Summers.)

Mr. RODEN.—I think it is in the record. All right.

Q. Was the rainfall during December 30th and 31st, 1919, and January 1st and 2d, 1920, extraordinary, Mr. Summers? A. No, it was not.

Q. Was the rainfall on January 7th, 1920, extraordinary? A. Yes.

Q. On January 2d, the period of time that ended at 11 o'clock on the morning of January 2d, extending 24 hours back, how much was the rainfall during that time? A. That was .66 of an inch.

Q. When was the rainfall the heaviest on the 2d, in the morning or late in the day?

A. It was heaviest from 11 A. M. to 6 P. M., during which period it averaged about .11 an hour.

Q. So it was from 11 o'clock in the morning until 6 o'clock in the afternoon of the 2d of January that the rainfall was the heaviest? A. Yes.

Mr. RODEN.—That is all. [825]

#### Cross-examination.

(By Mr. HELLENTHAL.)

Q. Mr. Summers, the quantity of run off that runs down the mountain-sides and the gulches does not depend upon rainfall alone, does it?

A. No; it would depend on melting snow and seepage that was already in the ground.

Q. If there was a lot of snow lying on the mountain-sides further up, that would melt and run down the gulches, and you cannot tell by the rainfall record what the run off would be at any given point, could you?

(Testimony of M. B. Summers.)

A. Not in a mountainous country, no.

Q. And that is the situation here, isn't it, Mr. Summers? These mountains are covered with snow long after the snow is gone from the Juneau streets?

A. Yes; there was no snow on the ground, however, on the dates in January, January 1st and 2d, in Juneau.

Q. But there was snow on the mountains, wasn't there?

A. Probably was—we don't have any record of that.

Q. There was snow on the level of the Alaska Juneau flume and all around there on the 2d of January? A. I couldn't say as to that.

Q. All you know is that some 8 inches of snow that had fallen on the 30th and 31st, along there, had melted by the morning of the 2d?

A. Yes, sir.

Q. In Juneau, on the streets?

A. Yes, sir, in Juneau.

Q. As to the conditions of the mountains, that is a different proposition upon which you have no record? A. Exactly.

Q. The weather was moderate on those days, wasn't it?

A. Yes; on the 1st and second it was above freezing throughout.

Q. And the rain was what you call a steady rain, wasn't it, Mr. Summers? [826]

A. Yes, a steady rain.

(Testimony of M. B. Summers.)

Q. And a little harder than the ordinary Juneau rain?

A. It was not an extraordinary rain, but nevertheless heavier than the ordinary rain we have in Juneau.

Q. And that was steady? A. Yes.

Q. And if that was falling on the melting snow on the mountain there would be a big run off?

A. Depend on the quantity of snow.

Q. Your records show that some 8 inches of snow melted on the streets of Juneau during the 1st and 2d; isn't that right? A. Yes, sir.

Q. And the snow wouldn't melt as rapidly on the mountains as it would on the street, would it?

A. No.

Mr. HELLENTHAL.—That is all.

(Witness excused.)

**Testimony of William Layton, for Plaintiff (in Rebuttal).**

WILLIAM LAYTON, called as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows, in rebuttal:

**Direct Examination.**

(By Mr. RODEN.)

Q. What is your name? A. William Layton.

Q. Where do you live?

A. Lower Front Street.

Q. How long have you lived on lower Front Street? A. Since 1896.

(Testimony of William Layton.)

Q. Do you know the place above lower Front Street where a crack occurs in the ground at the present time? A. Yes—yes, sir.

Q. Whereabouts is that located in reference to your residence? [827]

A. Well, one part of it comes right down through my garden.

Q. When did you first notice that?

A. I should judge about a month ago.

Q. Where does this break commence, Mr. Layton?

A. Well, it seems to me it commences under the dump.

Q. Under which dump?

A. The big rock pile.

Q. Whose big rock pile?

A. The Alaska Juneau.

Q. How do you know it commences under the dump?

A. Well, I should judge by the formation of the break.

Q. Where did you see the break?

A. Coming from the rock pile, coming this way I should judge 100 or 125 feet, then turns down the hill about 100 feet.

Q. So it comes from under the rock pile?

A. Yes.

Q. And runs fairly parallel with the mountain?

A. Yes.

Q. For a hundred feet? A. Yes.

Q. And then comes down the hill and runs down another hundred feet? A. Yes, sir.

(Testimony of William Layton.)

Q. How is the ground there—is it pressed down?

A. Yes, I should judge that is the way it looks to me—dead weight—the biggest face showing is right at the pile.

Q. Right at the waste pile?

A. Right at the waste pile, yes; and by getting in certain positions there you can see recesses in the pile showing that it goes underneath. Before that was almost smooth, but now at this end you will find there are recesses in the rock pile.

Mr. RODEN.—That is all. [828]

#### Cross-examination.

(By Mr. HELLENTHAL.)

Q. That crack started first a month ago?

A. Yes, about a month ago.

Q. The earth broke when it started?

A. I don't know—I couldn't say—I didn't take notice of it at that time, but what drawed my attention to it first was the fence—I saw the fence was getting all out of shape.

Q. That fence behind your house?

A. Yes; and I thought somebody had broke the fence and I looked and see the 20-penny nails were being drawed.

Q. You have a bulkhead there? A. Yes.

Q. And it was on the bulkhead that you saw the strain?

A. No, there is no strain on the bulkhead—no, it hadn't reached that—it is above that.

Q. Where were the nails drawn that you are talking about?

(Testimony of William Layton.)

A. In the fence running up and down.

Q. The fence right behind your house?

A. Yes, running right up the hill.

Mr. HELLENTHAL.—That is all.

Q. (By Mr. RODEN.) That fence runs right up and down the hill?

A. Yes; that divides my lot from Roberts'.

Mr. RODEN.—That is all.

(Witness excused.) [829]

**Testimony of L. S. Robe, for Plaintiff (Recalled in Rebuttal).**

L. S. ROBE, recalled as a witness on behalf of the plaintiff, having previously been duly sworn, testified in rebuttal as follows:

Direct Examination.

(By Mr. RODEN.)

Q. Mr. Robe, have you examined the crack in the ground above lower Front Street in the town of Juneau? A. Yes, sir, I have.

Q. I wish you would explain to the Court and jury what you found there.

A. I found at the point of greatest displacement a vertical slip of about 3 feet and a lateral slip of about 16, possibly 18, inches.

Q. Where does that break commence with reference to the waste pile?

A. The southerly line of the break—

Mr. HELLENTHAL.—Your Honor, I don't care what he testifies about this, but I don't want to have

(Testimony of L. S. Robe.)

*to into* the matter of defending that waste pile at this time. If he wants to show what is the cause of the slide independently of that, all right.

The COURT.—The only question before me now is whether or not it is rebuttal. Did he see the break?

Mr. RODEN.—He has stated in his previous answer that he did.

The COURT.—That he saw it when it broke?

Mr. RODEN.—No, saw it yesterday.

The COURT.—What do you mean by, where does it commence. Where one end is and where the other end is?

Mr. RODEN.—Where it begins.

The COURT.—Do you mean where it commences to break or where it begins with reference to the surface of the ground?

Mr. RODEN.—With reference to the surface of the ground.

The COURT.—He may describe it because the other side described it. [830]

The WITNESS.—The first visible point of break is a point about 35 feet back uphill from Layton's house, which point is about opposite the northerly end line of the lumber-yard; thence it describes a flat arc running in a general northwesterly direction a distance of about 175 feet following closely the toe of the slope; at the upper end of the said 175 feet it joins the point of main break, at which point it joins it at an angle, oh, of about I should say 75 degrees. This main break at this point

(Testimony of L. S. Robe.)

seems to run into the dump about 12 or 15 feet; thence continues in a northwesterly direction to a point about 8 feet to the east of the fence corner; thence through the fence line at an angle of about 75 degrees from the aforementioned line for a distance of 160 feet or thereabouts, a flat arc with a more or less irregular form to a point about 30 feet above the street level, at which point there is no more evidence of slide.

Q. I wish you would make a little sketch of this proposition, Mr. Robe, as you saw it and as you have described it to be now, and I wish you would explain the sketch in a few words.

A. This dotted line represents the toe of the slope of the dump.

Q. That is this edge of the dump?

A. The northern toe ; this square is Layton's house; this point about 35 feet back of Layton's house is the point where the crack is first discernible—it is about 5 feet or less from the toe of the slope; thence it follows in a general northerly direction—or northwesterly direction, I should say, about 175 feet to that point there, immediately on the edge of the toe of the slope, or a few feet from it—maximum 5 feet distant; at this point it intersects the point of greatest break. Here, as I said before, the vertical slip is about 3 feet, the lateral slip is about 16 or 18 inches; it runs southerly into the dump from there 12 or 15 feet. [831]

Q. How can you determine that?

A. That is evident from the drop in the dump there

(Testimony of L. S. Robe.)

further than that we do not know. At a point about midway of this 175 feet aforescribed there seems to be another crack which runs in a southerly direction into the dump for a distance of approximately 125 feet and is visible on the surface of the fill or dump by a depression on the slope. This line here, the line of greatest crack, seems to cease at a change of formation. This is largely hardpan with some loose rock—very little material—while below that where the line of greatest weakness or break is shown—seems to be along the same line practically—appears to be a pocket or old fill. Along this point about 8 feet easterly from the corner of the fence the line zigzags in a more or less irregular way to the northwesterly about 160 feet. It can be plainly followed the whole distance. At the westernmost point of this line the break ceases at a point I should judge 30 or 35 feet uphill from *his* bulkhead, which shows no displacement.

Q. As I understand the diagram, from here on the break runs down the hill?

A. Almost at right angles with the hill.

Q. What, in your opinion, caused that break, Mr. Robe?

Mr. HELLENTHAL.—We object to that, your Honor; going to try another lawsuit?

The COURT.—I think myself, Mr. Roden, that we cannot try the cause of that slide.

Mr. RODEN.—No, but who brought it in here, your Honor?

(Testimony of L. S. Robe.)

Mr. HELLENTHAL.—Your Honor, the testimony adduced with reference to this coming slide was to show the progressive slide movement of the earth when it breaks—that is all that it was introduced for.

The COURT.—That is what I understood it was introduced for—to show that a slide is not a sudden thing. [832]

Mr. RODEN.—There is no slide in this case—there is an absolute breaking down by mere weight on top—by the weight of the dump. It isn't a question of slide—it is a question of breaking.

The COURT.—If that is so it certainly has nothing to do with the case.

Mr. RODEN.—No, it has nothing to do with the case but they brought it here to show that that slide down there happened the same way as this one that we complain of here, and I want to show the situation is entirely different.

The COURT.—I will say to you the same as I said to the other side, go ahead but make it short.

Q. What in your opinion caused the slide?

A. The dead weight of the material.

Q. The dead weight of the rock pile?

A. Yes, sir.

Mr. RODEN.—That is all.

#### Cross-examination.

(By Mr. HELLENTHAL.)

Q. Your opinion is that the rock pile lying behind the crack caused the mass in front of the crack to move; is that right?

(Testimony of L. S. Robe.)

A. Simply follows the line of weakness—

Q. Answer my question, please.

A. And the crack extends into the dump—how far it is impossible to know. It is caused by the dead weight of the material, though.

Q. Your opinion is that the mass in front of the crack moved because there was weight behind the crack; is that right?

A. The lead weight there moved it.

Q. The weight behind the crack caused the mass in front of the crack to break; is that right?

A. The dead weight, sure.

Q. Yes, that is the dead weight. And you are the same Robe [833] that was worrying about the man stealing the key out of the mill superintendent's pocket a little while ago?

A. I think that came up in the court.

Mr. HELLENTHAL.—That will be all.

(Witness excused.)

Plaintiff rests.

Mr. HELLENTHAL.—I have a motion that I would like to submit, your Honor.

(Whereupon the jury retired from the courtroom.)

Mr. HELLENTHAL.—Comes now the defendant and moves the Court to direct a verdict in favor of the defendant on the following grounds, to wit:

### I.

That there is no evidence before the Court that the defendant was negligent in any respect whatsoever.

## II.

That there is no evidence that the defendant was negligent in relation to any of the matters or things charged in the complaint or bill of particulars; but, on the contrary, the evidence shows that the defendant at all times referred to in the complaint and pleadings herein was in the exercise of the highest degree of care.

## III.

That the evidence conclusively shows that water coming from the defendant's penstock or other part of the defendant's flume or diverting works was not the proximate cause of the injury complained of, or the resulting damage; that the evidence conclusively shows that said water could not have flowed in the direction of the slide area, but for the intervention of an independent, intervening cause; that there is [834] no evidence that the defendant was responsible for any obstruction to the natural drainage along which water would have drained to Portal Gulch, had it not been for such obstruction, whatever it might have been; that the evidence conclusively shows that waters coming from the penstock, if any, would have drained to Portal Gulch and not to the slide area, had it not been for some obstruction; and that there is no evidence of what such obstruction consisted, and especially no evidence that the defendant was responsible for its existence, whatever it may have been; or that it was such that the defendant should have anticipated or provided against. Furthermore the evidence conclusively shows that if it had not been for the exist-

ence of the trail leading down the ridge in the direction of the slide area the water would have left the ridge and drained in the direction of one or the other of the two gulches that exist on either side of the ridge; and that there is no evidence that the defendant was responsible for the existence of said trail or for the fact that said trail carried water, instead of permitting the same to follow the line of natural drainage.

## IV.

That there is no evidence of damage sufficient to enable the jury to find a verdict in favor of the plaintiff, or to assess the plaintiff's damages, if any, or to base a verdict for damages upon.

## V.

That there is no evidence of any of the matters or things charged in the complaint sufficient for the jury to find a verdict in favor of the plaintiff.

The COURT.—The motion will be overruled.

Mr. HELLENTHAL.—Your Honor will allow us an exception?

The COURT.—Yes. [835]

Whereupon, the Court, the jury and counsel for the respective parties view the premises.

(Court adjourned until 10 A. M. the following morning.)

MORNING SESSION.

April 4, 1921, 10 A. M.

Testimony of P. R. Bradley, for Defendant  
(Recalled in Rebuttal).

P. R. BRADLEY, recalled to the stand, having previously been duly sworn, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Mr. Bradley, will you tell in a short way what changes have been made on the ground so that the jury will appreciate the situation, and how the configuration of the ground differs now from what it did before the penstock was moved?

A. Before the penstock was moved the trail wasn't cut so far back into the hill,—when we cut that trail further into the hill in order to put the pipe-line further back we made more of an excavation there and we did more or less rock work and blasted out a cut to put in this pipe-line, and all this soil and muck was thrown straight out, which was the easiest way to get rid of it.

Q. That point where the penstock spout was, is that evident upon the ground?

A. It is evident to a person who knew it before.

Q. By what?

A. There are two things which fix the position of the penstock; one is the line of the pipe-line that comes up the hill—the penstock was originally at the head of the pipe-line, and the center line of that pipe-line as it goes up the hill would be practically the center line of the penstock as it originally stood.

(Testimony of P. R. Bradley.)

Q. The pipe-line entered the penstock at the southerly side? A. At the lower end.

Q. And the penstock would stand to the north of where the pipe-line [836] now is?

A. It would stand on the uphill side. In addition to that line, the line of the flume that came from the tunnel to the penstock is still apparent because the legs of the trestle work are still there, and if anyone goes there now they can get the line of the pipe coming into the center of the front of the penstock, and they can get the line of the flume coming into the side of the penstock, and one can very closely approximate from those two things the position of the penstock as it originally stood.

Q. The dirt that was loosened by putting in the new pipe and things of that kind ran down hill and covered up the ground?

A. Yes; and also the rubbish from the change house, the old flume and all that is lying there on the hillside.

Mr. HELLENTHAL.—Does the Court or jury wish to ask Mr. Bradley any questions about the situation?

Mr. RODEN.—No questions.

Mr. HELLENTHAL.—That is all, then.

The COURT.—I understand that the testimony is now closed, on both sides.

Mr. HELLENTHAL.—Yes, your Honor; and the motion I made yesterday will be renewed, so that it will be made at the close of the testimony. It is the same motion.

Whereupon a motion to direct a verdict in words and figures identical with the motion to direct a verdict hereinbefore set up at length was submitted to the Court, and the Court having overruled the same, the defendant duly excepted to such ruling and order of the Court, which exception was then and there allowed. [837]

In the District Court for the District of Alaska,  
Division Number One, at Juneau.

No. 1990-A.

ISADORE GOLDSTEIN,

Plaintiff,

vs.

ALASKA JUNEAU GOLD MINING COMPANY,  
a Corporation,

Defendant.

**Certificate of Stenographer.**

I hereby certify that I am the official reporter for the U. S. District Court, First Division of Alaska; that I reported the testimony given at the trial of the above-entitled cause, and that the foregoing is a full, true and correct transcript of all evidence given and proceedings had at said trial.

Dated this 19th day of October, 1921.

L. A. GREEN. [838]

Whereupon the defendant requested the Court in writing to give the following instructions:

**INSTRUCTION No. I.**

Gentlemen of the jury, I instruct you that under

the law and the evidence in this case you must return a verdict in favor of the defendant.

#### INSTRUCTION No. II.

I instruct you, gentlemen of the jury, that if you should find it to be a fact that the slide which occurred on January 2d, 1920, and which forms the basis of this controversy, was caused by water which escaped from the penstock of the defendant, that that fact alone would not make the defendant liable to the plaintiff in this case. The defendant had a perfect legal right to divert the waters of Gold Creek and convey the same to its milling plant, and had the right to use flumes, penstocks and other similar devices designed for, and used in connection with, the diversion and conveyance of water, and in doing this, it was only required to exercise the degree of care that an ordinarily prudent person would exercise under similar circumstances. That is to say, in the selection, installation and maintenance of the devices employed, the law required the defendant to exercise the degree of care that an ordinarily prudent person would exercise under like circumstances, and no more.

Before the defendant can be held liable, it must have been guilty of a degree of negligence that results from the failure to exercise the degree of care I have just referred to. In this connection I instruct you that the defendant cannot be held liable for slight negligence, should you find that it had been slightly negligent in connection with the selection, installation or maintenance of its penstock or other devices connected with its flume, pipe-line or

diverting works. Slight negligence which results from the failure to exercise the highest degree of care, would not be sufficient to render the defendant liable to the [839] plaintiff in this case. Before it can be held liable it must be guilty of that degree of negligence which results from the failure to exercise the care that an ordinarily prudent man would exercise under similar circumstances. If the defendant exercised this degree of care, it did all that the law required of it, and if you find that it did so act, it will not be liable to the plaintiff in damages, even though you should further find it to be a fact that the plaintiff was injured and suffered damage because of the acts of the defendant.

#### INSTRUCTION No. III.

I instruct you, gentlemen of the jury, that if you find from the evidence in this case under my instructions, that Peter Koski or any of his predecessors in interest, made an excavation on the premises occupied by the Koski house referred to in the pleadings herein, and if you find that this excavation occasioned or caused the slide referred to in the complaint, the defendant cannot be held liable, even though you should also find that water escaped from the defendant's penstock. Before you can find for the plaintiff in this case, you must find that the excavation above referred to did not cause or occasion the slide.

#### INSTRUCTION No. IV.

I instruct you, gentlemen of the jury, that where the injury has resulted because of an occurrence of several acts or conditions, one of which is a wrong-

ful act or omission of a third party, and thus the injury results but would not have been produced but for such wrongful act or omission, then said act or omission is the proximate cause of the injury.

**INSTRUCTION No. V.**

I instruct you, gentlemen of the jury, that, before you can hold the defendant in this case liable, a wrongful act or omission on the part of the defendant as the same has been defined in [840] these instructions must have been the proximate cause of the injury complained of. And in this connection I instruct you that if you should find from the evidence in this case that the injury has resulted from the concurrence of two or more acts or conditions, one of which is a wrongful act or omission on the part of the third party as defined in these instructions, should you find that the third party was guilty of such wrongful act or omission and that the injury resulted because of the concurrence of such two or more causes, you cannot hold the defendant liable unless you further find from the evidence that the injury which resulted from such concurrent acts or conditions would not have been produced had it not been for the wrongful act or omissions of the defendant.

**INSTRUCTION No. VI.**

I instruct you, gentlemen of the jury, that if, under the facts in this case, you find that the cut in the bank to which the witnesses have testified as having been made at the point where the Koski house formerly stood, was the cause which, together with other natural causes, helped to produce the

1000 *Alaska Juneau Gold Mining Company*

landslide which is the subject of inquiry, then I instruct you, gentlemen of the jury, that the plaintiff in this case cannot recover.

INSTRUCTION No. VII.

I instruct you, gentlemen of the jury, that if you find that water did escape from the penstock of the defendant and that such water found its way to the slide area and was the proximate cause of the slide, as I have defined the term proximate cause in these instructions, you cannot find a verdict for the plaintiff.

If you also find that such water would not have reached the slide area and would not have caused the slide, had it not been for the existence of the trail leading down the mountain-side, to the existence of which the witnesses have testified; if you find that the natural drainage on the hillside was in the direction of Portal Gulch and that the water would have flowed there had [841] it not been for the act or acts other than the defendant's, or for any cause or causes over which the defendant had no control, then the defendant cannot be charged with negligence because of water that did not flow along the line of natural drainage, or for damages resulting from such flow; if you find the conditions to be such as I have last indicated with reference to drainage and the flow of water, your verdict should be for the defendant.

Filed in the District Court, District of Alaska, First Division. April 3, 1921. J. W. Bell, Clerk.  
By L. A. Green, Deputy.

Whereupon, after arguments by respective counsel, the Court instructed the jury as follows:

**Instructions of Court to the Jury.**

Gentlemen of the Jury:

This is an action brought by Isadore Goldstein for the recovery of compensation for damages alleged to have been sustained by him by reason of a slide which occurred in the city of Juneau on the second day of January, 1920. The plaintiff alleges that the slide was occasioned by water escaping from the ditch, flume or penstock of the defendant company and running down the slope of the hill. It is claimed that the said water so escaped and ran down the hill by and through the negligence of the defendant.

It is established that plaintiff was damaged by the slide of January 2, 1920.

It is the contention of plaintiff that water escaping from the ditch, flume or penstock of defendant was a proximate cause of the slide which did the damage; while defendant contends, 1st, that no water of any appreciable amount escaped from the flume or penstock prior to the slide; 2d, that even if any such water did escape, yet such water was not a proximate cause of the slide.

**PROXIMATE CAUSE.**

What is meant in law when one thing is said to be the cause of another? In one sense all things that go before are the causes of all things that come after, for all things that go before combine [842] in some degree, infinitesimal though it may be, to

produce the things that come after; but in law no such refinement can be indulged in for the law does not consider remote causes but only proximate causes, that is, near causes—near in point of potency—efficient causes. The law considers that to be a proximate cause which is an efficient cause—one that necessarily sets the other causes in operation. No event can be said to be the proximate cause of a subsequent event unless that subsequent event would not have happened if the particular event had not already happened.

So the first question that should present itself to you would be, did any water escape from the ditch, flume or penstock prior to the landslide? If you answer that in the affirmative, then you take up the question whether or not the escaping water was a proximate cause of the slide. In determining this question you should take into consideration what was the state of affairs existing at the time the water escaped, if it did escape; then consider how much water escaped, and where it flowed to, and what effect, if any, it had on the then existing state of affairs,—all as shown by the evidence, for you cannot go beyond the evidence. If the water escaping (provided any such did escape) before the slide was of small quantity or force, and so little affected the then existing state of affairs that the slide would have occurred even if the water had not escaped, then the escaping water, if any, was not a proximate cause of the slide. On the other hand, if you find from the evidence that the escaping water, if any, was of such amount and force and so

placed that acting upon the then existing state of affairs the slide was produced by its material assistance, and would not have happened but for that assistance, then the water was a proximate cause of the slide.

One thing may be a proximate cause and yet not the sole cause, for there may be more than one proximate cause. An occurrence may be the result of several happenings, each one [843] materially contributing to bring about that event, but when that is the case no one of those things is a proximate cause of the result unless that result would not have happened if that one supposed cause had not already happened.

In order to find that water flowing from the penstock, if any, was the cause of the slide it would not be necessary to go so far as to find such water alone and unaided by other forces caused the slide, but it would be necessary to find that the said water was one of the material agencies in producing the slide and that such slide would not have occurred unless the water escaping from the flume did flow over the area of the slide.

#### BURDEN OF PROOF TO SHOW PROXIMATE CAUSE.

The burden of proof to show that the escaping water, if you find that any water escaped before the slide, was a proximate cause of the slide, is on the plaintiff—that is to say, if the plaintiff would have you believe that this slide was caused by water escaping from the ditch, penstock or flume, he must produce (or rather there must have been produced

in the case) stronger, weightier, more convincing evidence that the water was a proximate cause than the defendant would have to produce that the water was not a proximate cause.

If you do not find from a preponderance of the evidence that water escaping from the ditch, flume or penstock was a proximate cause, you should find for the defendant irrespective of any other considerations.

I have been directing your attention solely to the question of proximate cause of the slide, for the cause of the slide must be determined before you would be in a position to say whether or not defendant was liable.

#### NEGLIGENCE.

I come now to the question of liability. If in your opinion the preponderance of the evidence shows that water escaping from the ditch, flume or penstock was a proximate cause of the slide [844] you should then determine whether or not the water was permitted to escape through the negligence of the defendant, for the gist of this action is negligence.

Now, the defendant company had a right to divert the waters of Gold Creek and bring them around the mountain and utilize them by means of flume, ditch, penstock and pipe-lines in the running of its mill. In doing this it is not an insurer against the infliction of damage. It is not liable for damages which may result from its so diverting the water if such work be done with ordinary care. While it has this right, however, to divert the waters of Gold

Creek by bringing them around the mountain, yet if in so doing it negligently permits water to escape and cause damage, it is liable for the damage caused thereby, if any.

The second question for you to consider, then, is this: Was the escape of the water, if any water escaped before the slide, due to the negligence of the company in any of the particulars alleged in the complaint?

Negligence is the absence of that degree of care which an ordinarily prudent person having due regard for the welfare, the safety and the rights of others would exercise under the circumstances of the particular case being inquired of. Now, the degree of care which an ordinarily prudent person would exercise in any given case is proportional to the dangers reasonably to be apprehended and guarded against in the light and in the view of all the circumstances and of the consequences if such dangers culminate in some untoward event.

In this case the particulars of negligence alleged by the plaintiff, and such particulars, or some of them at least, he must show by a preponderance of the evidence, are as follows, that is to say: Plaintiff alleges that "by constructing and maintaining a flume or conduit to confine and carry away to some safe place any water which at any time, for any reason, might be conveyed to the penstock in excess of what the distribution pipe [845] would, could or did carry away, no water carried to the penstock could or would have overflowed or been deposited upon the slope or premises in question,

or otherwise occasioned any damage." He further alleges "that ordinary and reasonable care and caution on the part of the defendant required of it that it should have constructed and maintained at all times such waste flume to carry away such waste water or surplus water, and that defendant was negligent in not providing such protection against injury from surplus or overflowing water at or near the penstock." Plaintiff further alleges that "defendant was negligent in that it failed to provide and maintain a series of spillways along its flume by which spillways surplus water could and would be released from the flume before it reached the penstock." He further alleges that the overflow water of which he complains and which he alleges caused the damage herein complained of "was known to the defendant to be so flowing and likely to cause said damage long prior" to the occurrence of the slide complained of, or would, by the exercise of reasonable care on the part of the defendant have been "known to it long prior to the said slide and prior to any damage that would have been done by the said water." He further alleges "that defendant was negligent in not shutting off said water and preventing said overflow before any damage was occasioned thereby," and that it "wrongfully and unlawfully permitted the said water to flow upon the said premises."

Now, it is for you to say, from the evidence in this case, what, if any, dangers would have been reasonably anticipated by the ordinarily prudent man as likely to arise; and then it is for you to de-

termine, also, what, if any, precautions an ordinarily prudent man would have taken under the circumstances to avert the dangers that could be reasonably anticipated, and then if there are any precautions which the ordinarily prudent man would have taken, it is for you to say whether or not the defendant did take such precautions. Defendant would be held to the duty of [846] taking such precautions as the ordinarily prudent man would take against the dangers which an ordinarily prudent man would anticipate as being likely to arise. It would not be held to the duty of taking any more precautions. If, for instance, an ordinarily prudent man under the circumstances would have deemed it a wise or necessary precaution, or one called for under the circumstances, to build a waste-pipe or conduit or spillway to catch any overflow water that might escape from the penstock or flume, then the defendant should have taken such precaution. If, on the other hand, an ordinarily prudent man would have considered that under the circumstances there was either no danger that the water would overflow at the penstock, or if so, that it would do any damage if it did overflow, then the defendant could not be held to liability for not building such waste-pipe, conduit or spillways.

In short, did the defendant in this regard do or omit to do anything which an ordinarily prudent person would not have done or omitted to do, as the case may be, under the circumstances? If the answer is in the affirmative, the defendant was negligent just insofar as it failed to live up to the

standard which an ordinarily prudent man would set for himself. If the answer is in the negative, the defendant was not negligent.

To state again, essentially negligence is not the absence of high care nor the presence of low care or of no care, but it is the absence of that care which an ordinarily prudent person would exercise under the circumstances. Under some circumstances an ordinarily prudent person would exercise a high degree of care, and under other circumstances he would not be so careful,—it is for you to say, from the evidence, what the circumstances were,—that is, what the conditions were, what the dangers to be apprehended were, what precautions were wise or necessary to be taken, and what care an ordinarily prudent person, bearing all these things in mind, would have taken, and whether or not the defendant exercised that amount of care.

Negligence is never presumed. It must be proven by a preponderance [847] of evidence, and it must also be proven by a preponderance of the evidence that the negligence proven, if any, was the cause of the disaster complained of in any given case—that is to say, plaintiff cannot recover on the score of negligence unless it appears from a preponderance of the evidence that at least one particular of the negligence complained of existed, and he will have to prove in addition to that that particular act of negligence was the proximate cause of the injury proven, if any.

## CAUSES FOR WHICH DEFENDANT NOT RESPONSIBLE.

The fact, if it be a fact, that before the escape of the water Koski or his predecessors made an excavation in the bank or hill and that the slide would not have occurred but for that excavation, will not excuse the defendant if the escape of the water was a proximate cause, as I have defined approximate cause, and if that escape was due to the negligence of the defendant, as I have defined negligence, provided you find that the slide would not have been produced at all had it not been for the negligent act of the defendant.

Of course if the said cut in the bank, either alone or combined with natural causes over which the defendant had no control, produced the slide, the defendant would not be liable; but if the cut in the bank and natural causes, combined with the negligent act of the defendant in allowing water to escape from its penstock, if you find that any such water did escape, and that its escape was due to negligence—I say, if all these things combined produced the slide, and the slide would not have been produced except for the said negligent act, if you find it was a negligent act, then the defendant would be liable, and your verdict should be for plaintiff.

To make the matter a little plainer, gentlemen, where a cause produced by a negligent act of a defendant combines with causes for which the defendant is not responsible to produce a casualty, the law does not consider the negligent act as the

[848] proximate cause of the casualty unless it be true that the casualty would not have been produced except for that negligent act, and that an ordinarily prudent man under all the circumstances would have known or should have known that the casualty might result from that negligent act.

Applying that principle of law to this case, you are instructed that if you find that water escaped from the flume due to the negligence of the defendant and materially contributed to produce the slide, but that an excavation or excavations and the rains and snows and other conditions for which the defendant is not responsible, also contributed to produce the slide, you cannot find a verdict against the defendant unless you also find that the slide would not have been produced except for the escaping water and that an ordinarily prudent person would have known or should have known that the natural and probable consequences of the escape of the water would have been to produce a slide or like casualty.

You are the sole judges of the weight of the testimony and the credulity of the witnesses. You must decide the case on the evidence and the instructions of the Court, and not take into consideration any extraneous matters. You are to decide the case without fear or favor or sympathy. If the water was the cause of the slide and the defendant was negligent, it is but meet and proper that it should compensate the plaintiff for the damage inflicted. If water escaping from the defendant's flume or penstock was not the cause of the slide, or if the defendant was not negligent in the particulars

pointed out in the complaint, then it would be manifestly unjust to take money out of its pocket to compensate the plaintiff for damages which did not arise from its delinquency.

You make up your minds which witnesses are to be believed when they testify in court much the same as you do when they tell you a story outside of court—you size up the witness—you observe [849] his appearance and demeanor—you note whether he is frank and candid—whether he has shown a disposition to tell the truth and the whole truth about the matters to which he has testified; you consider how he stood cross-examination; you consider what interest he has in the story told and whether or not that interest has colored his testimony, and if so, to what extent; and from all the facts and circumstances appearing in the case make up your mind whom to believe and what to believe.

In this case expert testimony has been introduced on both sides. You should weigh the testimony of expert witnesses in the same manner as you weigh that of other witnesses,—that is to say, you are not bound to believe any expert unless his testimony seems reasonable under the circumstances. When matters beyond the ken of ordinary observation and experience—matters requiring special or technical knowledge arise, experts are called who are specially versed in those matters—they give their opinions for their reasons, and you weigh the whole matter. After all, it is what you believe that testimony is and what inferences you think ought to be drawn from it, that controls.

Arguments of counsel are not evidence. It is meet and proper that they should give their recollection of the evidence, and state the inferences which they think you should draw from that evidence, but, as said before, it is your recollection of the evidence and your judgment as to the inferences which are to govern your verdict.

If your verdict should be for the plaintiff *if* should be for such sum as you may find from the evidence he has been damaged as the direct, natural and probable consequences of the slide. You cannot allow anything by way of punitive damages or smart money. You have nothing to do with the costs in this case one way or the other.

If you find a verdict in this case, you will answer the following questions: [850]

- (1) Was water escaping from the ditch, flume or penstock a proximate cause of the slide?
- (2) Was the defendant negligent in any of the particulars set forth in the complaint?
- (3) If so, in what did that negligence consist?

Whereupon the defendant excepted to the instructions given by the Court as follows:

Mr. HELLENTHAL.—Note an exception on behalf of the defendant to the refusal of the Court to instruct as requested in Defendant's Requested Instructions Nos. 1, 2, 3, 4, 5, 6, and 7.

Defendant further excepts to the last part of the charge permitting the jury to assess damages, on the ground that there is no evidence under which the jury can assess damages, there being no evidence of market value, nor evidence of the extent of the

loss or damage, if any, sufficient for the jury to assess damages. Which exceptions were then and there allowed by the Court.

Whereupon the jury retired for deliberation, and thereafter, to wit, on the 5th day of April, 1921, returned into the court the following verdict:

“In the District Court for the District of Alaska,  
Division No. One, at Juneau.

No. 1990-A.

ISADORE GOLDSTEIN,

Plaintiff,

vs.

ALASKA JUNEAU GOLD MINING COMPANY,  
a Corporation,

Defendant.

**Verdict.**

We, the jury empanelled and sworn in the above-entitled cause, find for the plaintiff, and assess the amount of his recovery at \$18,275.00.

G. FAGERSON,  
Foreman.”

And on the said 5th day of April, 1921, the jury also returned [851] into court their special findings as follows, to wit:

"In the District Court for the District of Alaska,  
Division No. One, at Juneau.

No. 1990-A.

ISADORE GOLDSTEIN,

Plaintiff,

vs.

ALASKA JUNEAU GOLD MINING COMPANY,  
a Corporation,

Defendant.

**Special Findings of the Jury.**

We, the jury in the above-entitled cause, answer the questions propounded to us as follows:

(1) Was water escaping from the ditch, flume or penstock a proximate cause of the slide?

Answer: Yes.

(2) Was the defendant negligent in any of the particulars set forth in the complaint.

Answer: Yes.

(3) If so, in what did that negligence consist?

Answer: Failure to provide waste flume to carry overflow water from penstock and trommel screen to place of safety.

G. FAGERSON,  
Foreman."

That thereupon and in the presence of the jury the defendant excepted to the verdict of the jury and to the answer to the special interrogatories propounded to the jury, for the reason that the said verdict and the said answers, and each of them, are

contrary to law, not supported by any evidence, and not supported by sufficient evidence; and exception allowed.

That thereafter, within the time allowed by law, to wit, on the 7th day of April, 1921, the defendant filed a motion for a new trial, as follows, to wit:  
[852]

“In the District Court for the District of Alaska,  
Division No. One, at Juneau.

Case No. 1990-A.

ISADORE GOLDSTEIN,

Plaintiff,

vs.

ALASKA JUNEAU GOLD MINING COMPANY,  
a Corporation,

Defendant.

**Motion for New Trial.**

Comes now the defendant and moves the Court to set aside the verdict of the jury herein and for a new trial, on the following grounds, to wit:

**I.**

That the evidence is insufficient to justify the verdict.

**II.**

That the Court erred in denying defendant's motion to direct a verdict made at the close of the case, after the evidence on behalf of both sides had been adduced, submitted and closed; for the reasons stated in said motion, which is on file herein and to

which reference is hereby made and which said motion is to be considered as though set forth herein.

III.

That the Court erred in its instructions in so far as they related to the amount of damages that could be covered and in so far as they permitted the jury to assess damages; for the reasons stated in the exceptions taken at the time.

IV.

That the Court erred in not charging the jury as requested by the defendant in its several requested instructions, numbered I to VII, inclusively.

V.

For errors of law occurring at the trial, and excepted to by the defendant.

HELLENTHAL & HELLENTHAL,  
Attorneys for Defendant." [853]

That thereafter, to wit, on the 25th day of August, 1921, the Court denied the defendant's motion for a new trial as follows: [854]

In the District Court for the District of Alaska,  
Division No. One, at Juneau.

No. 1990-A.

ISADORE GOLDSTEIN,  
Plaintiff,  
vs.

ALASKA JUNEAU GOLD MINING COMPANY,  
a Corporation,  
Defendant.

**Ruling on Motion for New Trial.**

On this motion the principal contention is that the evidence as to the damage inflicted was not of such a nature as would permit the jury to found a verdict thereon. It must be confessed that the evidence is not very satisfactory on any particular item. This case was contested so vigorously on the question as to the cause of the slide and the liability therefor that the question of specific damages did not come in for a great deal of attention; and yet that particular of the case is as essential to be proven as any other particular. Our Circuit Court of Appeals has lately reversed a case for error arising in the submission to the jury of the question of damages when the evidence was indefinite and uncertain. (See Boland vs. Ballaine, 266 Fed. 22.)

So far as damages to the real estate are concerned, it may be said there was no evidence whatsoever of the value of the latter sufficient to allow a jury to predicate a verdict upon. No witness undertakes to say what it was worth before the slide and after the slide. Goldstein, in giving a list of his damages, refers to "three rows of cabins, \$3,000." Where those cabins were, what they were worth, how they were damaged, or whether they were totally destroyed, does not appear. He does not even estimate what it would cost to replace them. His sole reference is as above stated, "three rows of cabins, \$3,000." Manifestly this item should not have been submitted to the jury without more evidence [855]

As to the apartment house on the hill, Goldstein testifies that that cost him \$8,000, and that it was in active use and occupation up to the time of the slide; that it was totally destroyed by the slide, and he estimates that it would cost \$8,500 to replace it.

In fine, I think that as to the following items the evidence was sufficient to sustain a verdict for the following amounts, to wit:

Damage to the store building.....	\$ 1,500.00
Damage to the stock in the store and warehouse.....	2,500.00
Damage to the warehouse.....	1,400.00
House on the hill.....	8,500.00
Fixtures in the apartment house, as item- ized in testimony of Goldstein.....	1,725.00
Damage to the building on lot 2, block M.	1,000.00
<hr/>	
Total.....	\$16,625.00

The jury returned a verdict for \$18,275.00. There is no way of telling how much, if anything, they allowed for the "three rows of cabins, \$3,000," and as they could not legally allow anything for that item, the whole amount will have to be deducted from the amount of the verdict. This would leave the sum of \$15,275.00, to sustain which there has been, in my opinion, sufficient evidence introduced.

The verdict will be reduced to \$15,275.00 If within 30 days from this date the plaintiff elects to remit \$3,000 from the verdict returned and accept judgment for the remainder, the motion for a new trial will be denied; otherwise it will be granted.

ROBERT W. JENNINGS,  
Judge.

To which ruling the defendant excepted, and the exception was allowed.

That thereafter, to wit, on the 2d day of September, 1921, plaintiff filed his acceptance of the reduction of said verdict as follows: [856]

In the District Court for the District of Alaska,  
Division No. One, at Juneau.

No. 1990-A.

ISADORE GOLDSTEIN,

Plaintiff,

vs.

ALASKA JUNEAU GOLD MINING COMPANY,  
a Corporation,

Defendant.

**Plaintiff's Acceptance of Reduction of Verdict.**

Upon the hearing of defendant's motion for a new trial in the above-entitled and numbered cause, the Court having considered the matter of damages and after due consideration found that there was not sufficient testimony as to the loss or damage of three rows of cabins, in plaintiff's complaint alleged to have been destroyed and in said complaint alleged to be worth the sum of Three Thousand (\$3,000.00) Dollars, and the Court having, upon the 26th day of August 1921, rendered its decision upon the said motion for new trial that the same be denied upon the condition that the plaintiff consent, within thirty days therefrom, to the reduction of the verdict of the jury in the amount of Three

Thousand (\$3,000.00) Dollars, that is, from the sum of Eighteen Thousand Two Hundred Seventy-five (\$18,275.00) Dollars to the sum of Fifteen Thousand Two Hundred *Seventy-five* (\$15,275.00), otherwise the said motion to be granted:

The plaintiff, in compliance with the said ruling of the Court, now files his consent to the reduction of the verdict of the jury in the amount of Three Thousand (\$3,000.00) Dollars.

Dated at Juneau, Alaska, this 2d day of September, 1921.

RODEN & DAWES,  
Attorneys for Plaintiff."

Copy received Sept. 2, 1921.

HELLENTHAL & HELLENTHAL.

That on said 2d day of September, 1921, the Court filed its order modifying the Court's opinion on motion for new trial, as follows: [857]

In the District Court for the District of Alaska,  
Division No. One, at Juneau.

No. 1990-A.

ISADORE GOLDSTEIN,

Plaintiff,

vs.

ALASKA JUNEAU GOLD MINING COMPANY,  
a Corporation,

Defendant.

**Order Modifying Court's Opinion on Motion for a New Trial.**

WHEREAS, the Court in its opinion heretofore filed herein on the motion for a new trial used the following language:

“There is no way of telling how much, if anything, they allowed for the ‘three rows of cabins, \$3,000,’ and as they could not legally allow anything for that item, the whole amount will have to be deducted from the amount of the verdict. This would leave the sum of \$15,275, to sustain which there has been in my opinion sufficient evidence introduced”; and

WHEREAS, the Court in making said statements inadvertently overlooked the fact that among the items of damage claimed and as to which there was no sufficient evidence, is the item of \$1500 damages to real estate; and

WHEREAS, there was no evidence sufficient to go to the jury as to the amount of the damage to the real estate; and

WHEREAS, there is no way to ascertain how much the jury allowed for the said item “Damage to real estate”; and

WHEREAS, on that account the said verdict of the jury should suffer a further diminution of \$1500.00; and

NOW, THEREFORE, IT IS ORDERED that the said verdict of the jury should suffer a further diminution of \$1500.00, and that the said decision of the Court should be, and the same is, hereby amended to read as follows: [858]

"The verdict will be reduced to \$13,778.00. If within 30 days from this date the plaintiff elects to remit \$4,500.00 from the verdict returned and accept judgment for the remainder, the motion for a new trial will be denied; otherwise it will be granted."

Dated at Juneau, Alaska, September 2, 1921.

ROBERT W. JENNINGS.

That thereafter, to wit, on September 6, 1921, the plaintiff filed his consent to the reduction in the verdict of the jury, as follows:

"In the District Court for the District of Alaska,  
Division Number One, at Juneau.

No. 1990-A.

ISADORE GOLDSTEIN,

Plaintiff,

vs.

ALASKA JUNEAU GOLD MINING COMPANY,  
a Corporation,

Defendant.

**Plaintiff's Consent to Reduction of Verdict.**

Upon the hearing of defendant's motion for new trial in the above and numbered cause the Court having considered the matter of damages and after due consideration found that there was not sufficient evidence to submit to the jury as to the loss or damage of three rows of cabins, in plaintiff's complaint alleged to have been destroyed and in said complaint alleged to be worth the sum of \$3,000.00,

and the Court having, upon the 26th day of August, 1921, rendered its decision upon the same motion that the same be denied upon the condition that the plaintiff consent, within thirty days therefrom, to the reduction of the verdict of the jury in the amount of \$3,000, otherwise the said motion to be granted; [859]

And upon further consideration of the question the Court, on the 2d day of September, having revised its said order of the 26th day of August, 1921, to the effect of further reducing, for the same reasons, the said verdict in the further sum of \$1500.00 upon the question of damages to real estate alleged in said complaint to have been damaged to the said amount and overruling defendant's motion for new trial upon the condition that plaintiff, within thirty days therefrom, consent to the reduction of the verdict in the total sum \$4,500.00, that is, from \$18,275.00, to \$13,775.00, otherwise the said motion be granted.

The plaintiff, in compliance with the said ruling of the Court, now consents to the reduction of the verdict of the jury in the amount of Four Thousand Five Hundred (\$4,500.00) Dollars.

Dated at Juneau, Alaska, this 3d day of September, 1921.

RODEN & DAWES,  
Attorneys for Plaintiff.

Received copy.

J. HELLENTHAL."

And thereupon on the 6th day of September, 1921, the Court entered its order denying the motion for a new trial as follows:

"In the District Court for the District of Alaska,  
Division Number One, at Juneau.

Case No. 1990-A.

ISADORE GOLDSTEIN,

Plaintiff,

vs.

ALASKA JUNEAU GOLD MINING COMPANY,  
a Corporation,

Defendant.

**Order Denying Motion for New Trial.**

This matter coming on on defendant's motion for a new trial, and the plaintiff having remitted the sum of Four Thousand Five Hundred Dollars (\$4500) from the verdict,

IT IS ORDERED that the motion for a new trial be denied and that judgment herein be entered in the sum of Thirteen [860] Thousand Seven Hundred and Seventy-five Dollars (\$13,775.00); to which ruling and order of the Court the defendant, by counsel, excepts, which exception is allowed by the Court.

ROBERT W. JENNINGS,  
Judge. [861]



**MAP**  
showing the  
**LANDSLIDE**  
of January 2, 1920.

**TOPOGRAPHY IN ITS VICINITY**

Jur. C. Alaska

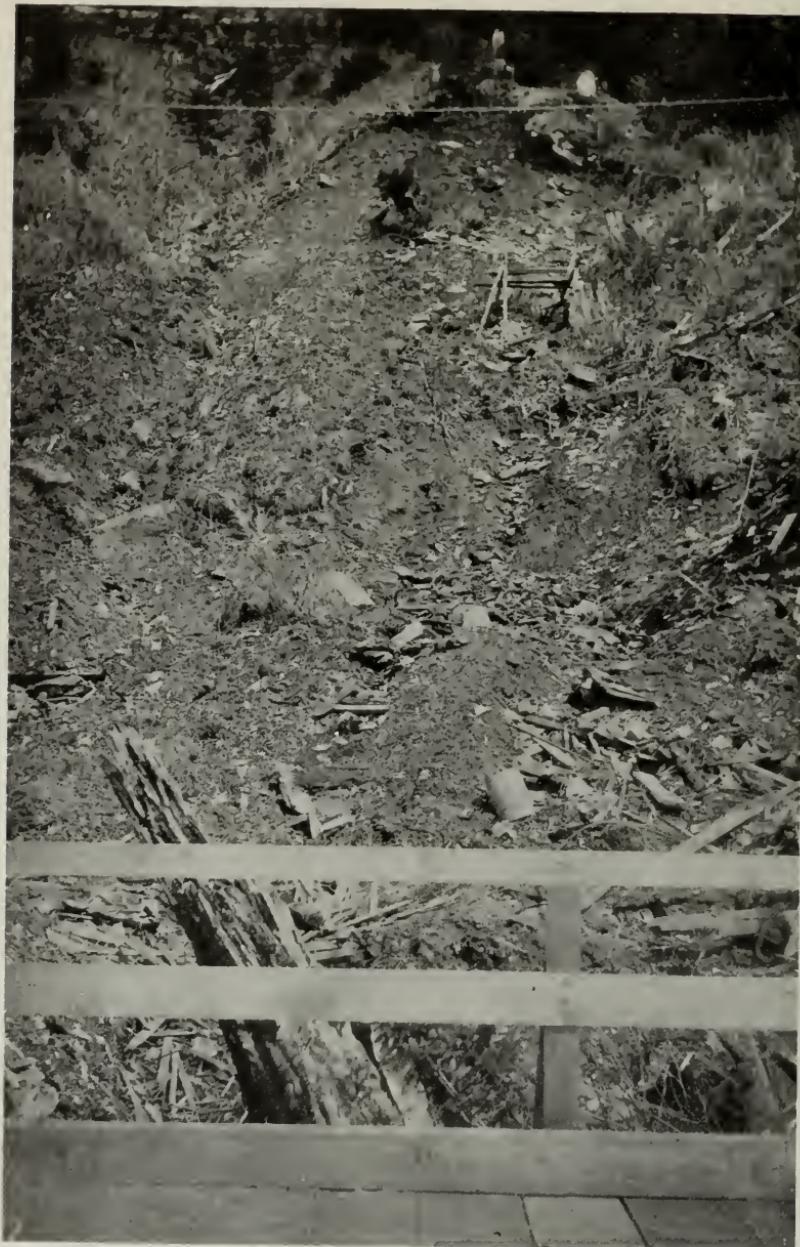
JUR. C. ALASKA

— 1 —



[Endorsed]: Plf's. Exhibit "A." Received in Evidence Mar. 23, 1921, In Cause No. 1990—A. J. W. Bell, Clerk. By L. O. Green, Deputy.  
[862]

Plaintiff's Exhibit "B."



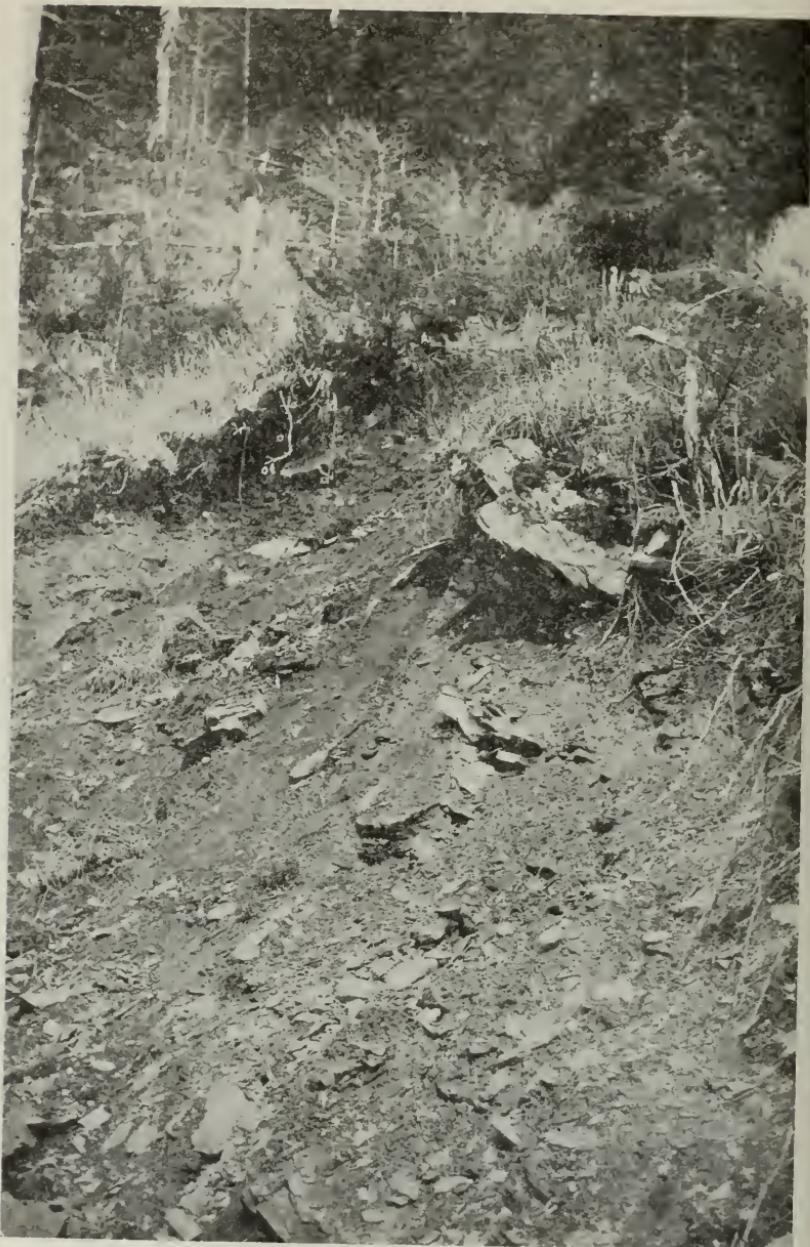
[Endorsed]: Plf's. Exhibit "B." Received in evidence Mar. 23, 1921, In Cause No. 1990—A. J. W. Bell, Clerk. By L. O. Green, Deputy.  
[863]

Plaintiff's Exhibit "C."



[Endorsed]: Plf's. Exhibit "C." Received in  
evidence Mar. 23, 1921, In Cause No. 1990—A.  
J. W. Bell, Clerk. By L. O. Green, Deputy.  
[863½]

**Plaintiff's Exhibit "D."**



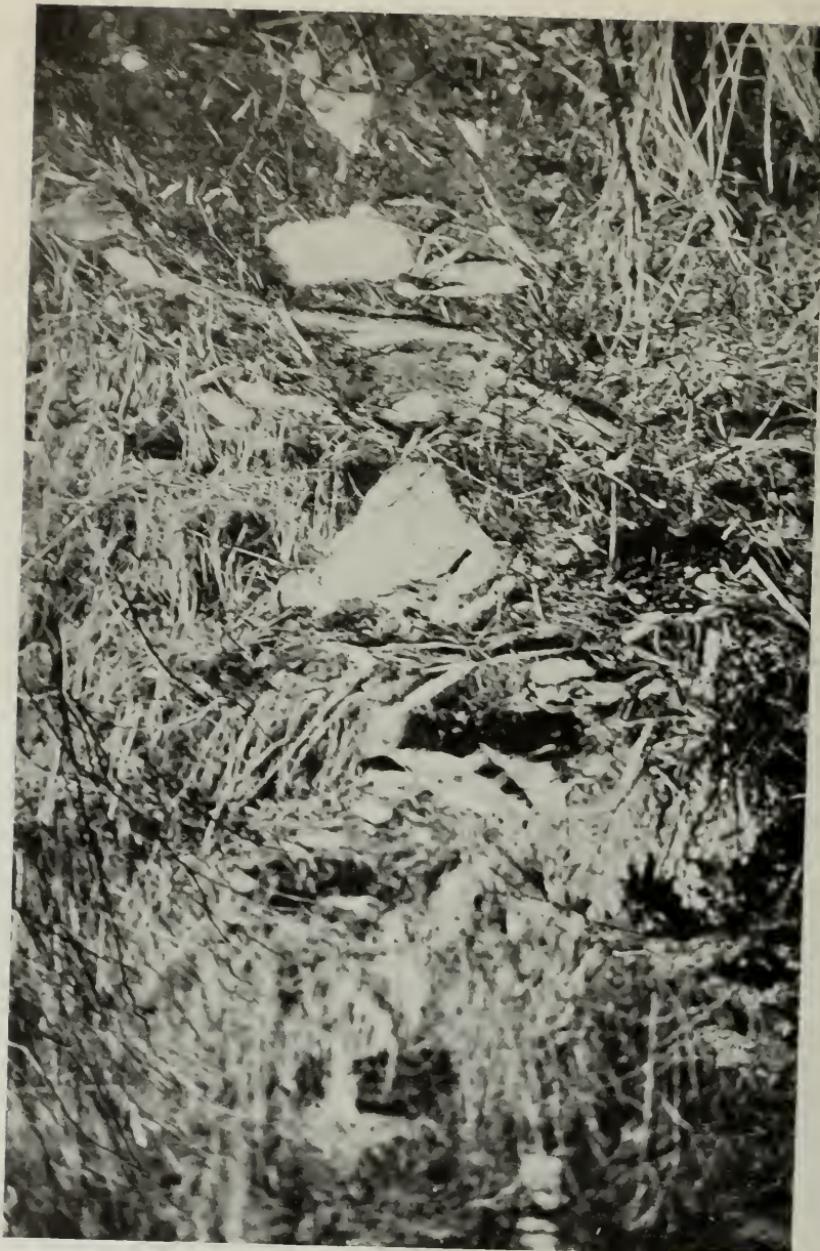
[Endorsed]: Plf's. Exhibit "D." Received in evidence Mar. 23, 1921, In Cause No. 1990—A. J. W. Bell, Clerk. By L. O. Green, Deputy.  
[864]

**Plaintiff's Exhibit "E."**



[Endorsed]: Plf's. Exhibit "E." Received in evidence Mar. 23, 1921, In Cause No. 1990—A. J. W. Bell, Clerk. By L. O. Green, Deputy.  
[864½]

**Plaintiff's Exhibit "F."**



[Endorsed]: Plf's Exhibit "F." Received in evidence Mar. 23, 1921, In Cause No. 1990—A. J. W. Bell, Clerk. By L. O. Green, Deputy.  
[865]

Plaintiff's Exhibit "G."



[Endorsed]: Plf's Exhibit "G." Received in evidence Mar. 23, 1921, In Cause No. 1990—A. J. W. Bell, Clerk. By L. O. Green, Deputy.  
[866]

**Plaintiff's Exhibit "H."**



[Endorsed]: Plf's Exhibit "H." Received in evidence Mar. 23, 1921, In Cause No. 1990—A. J. W. Bell, Clerk. By L. O. Green, Deputy.  
[867]

Plaintiff's Exhibit "I."

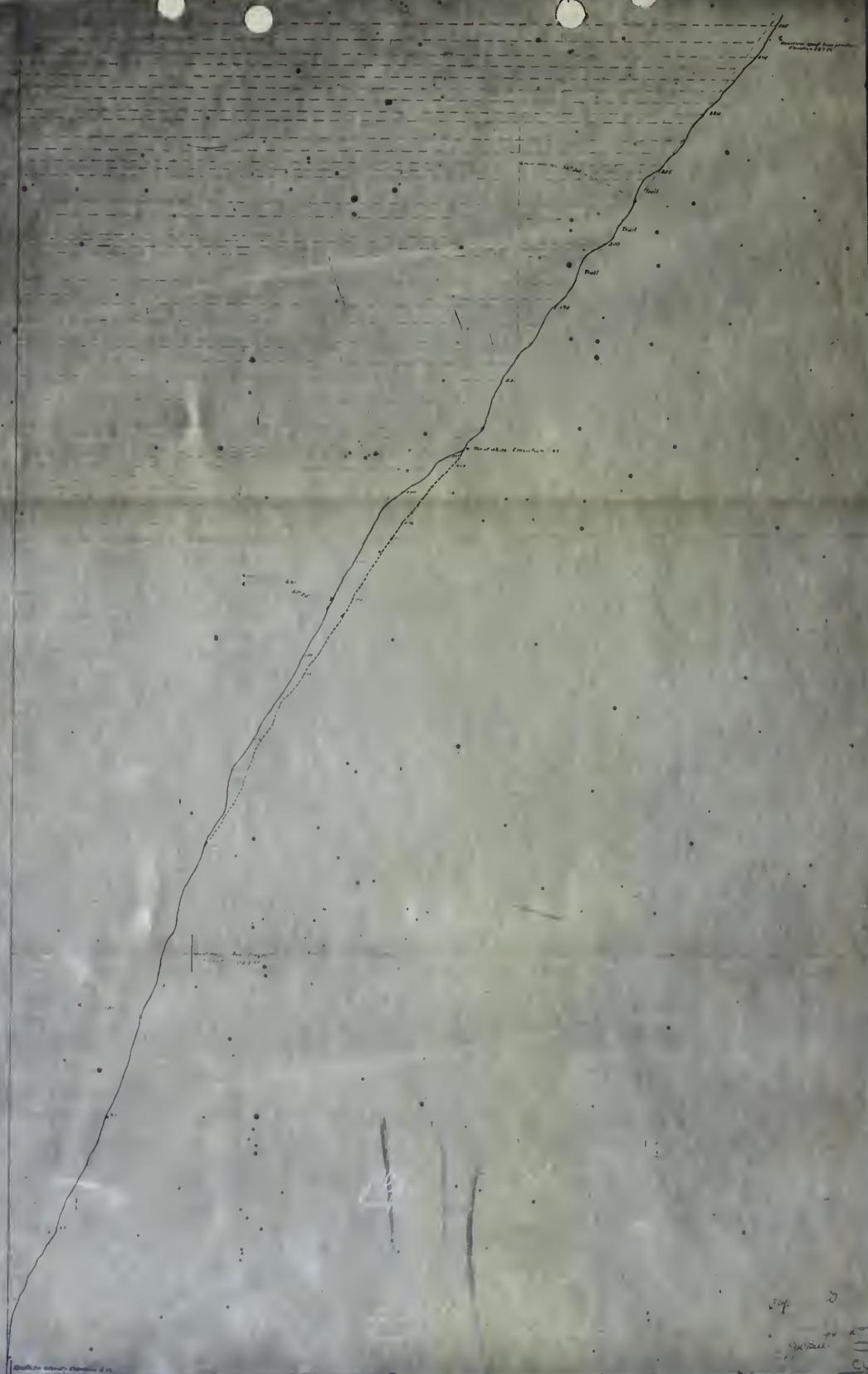


[Endorsed]: Plf's. Exhibit "I." Received in evidence Mar. 23, 1921, In Cause No. 1990—A. J. W. Bell, Clerk. By L. O. Green, Deputy.  
[868]

Plaintiff's Exhibit "L."



[Endorsed]: Plf's. Exhibit "L." Received in evidence Mar. 23, 1921, In Cause No. 1990—A. J. W. Bell, Clerk. By L. O. Green, Deputy. [871]



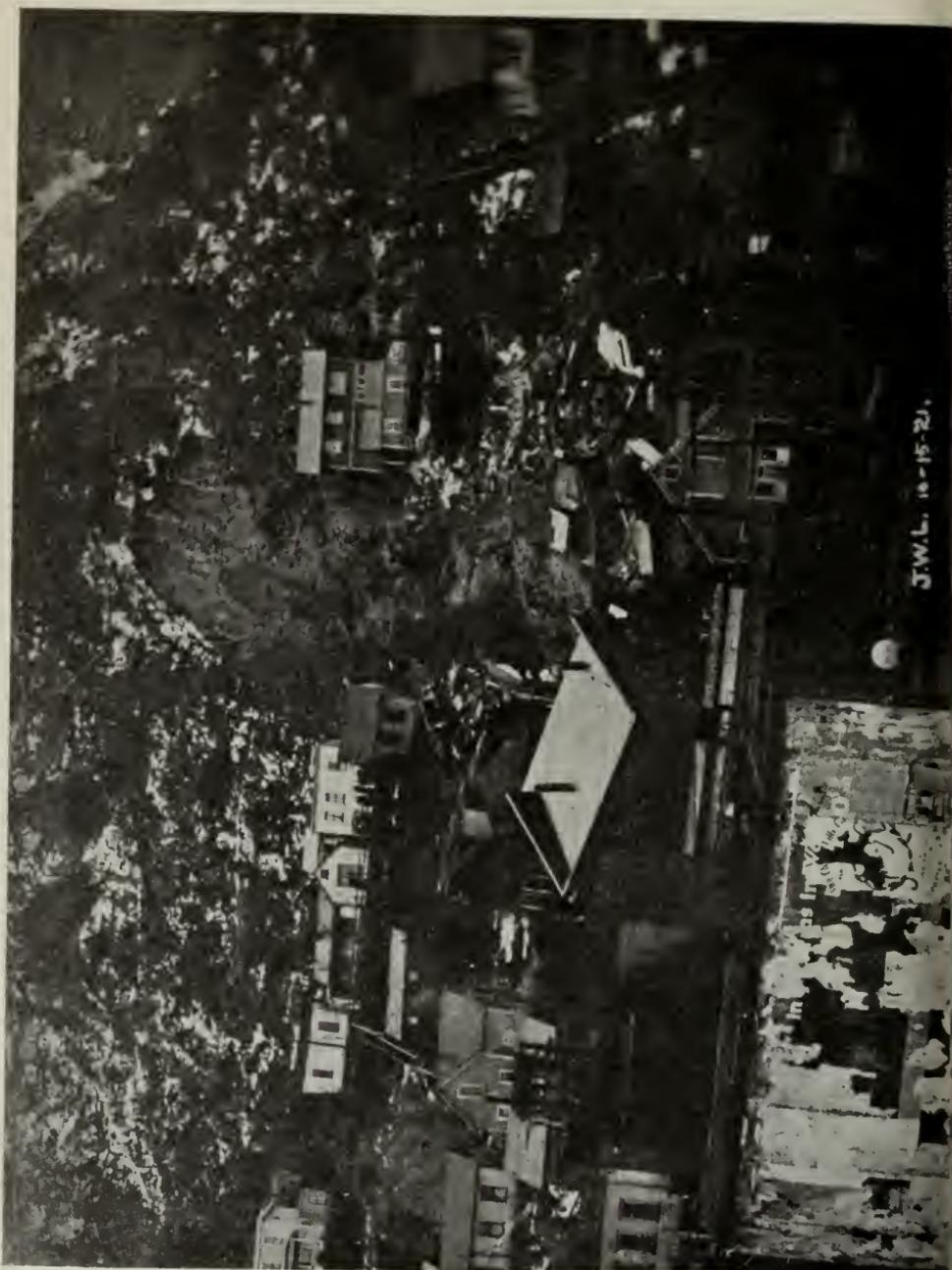


Plaintiff's Exhibit "N."



[Endorsed]: Plf's. Exhibit "N." Received in evidence Mar. 23, 1921, In Cause No. 1990—A.  
J. W. Bell, Clerk. By L. O. Green, Deputy. [873]

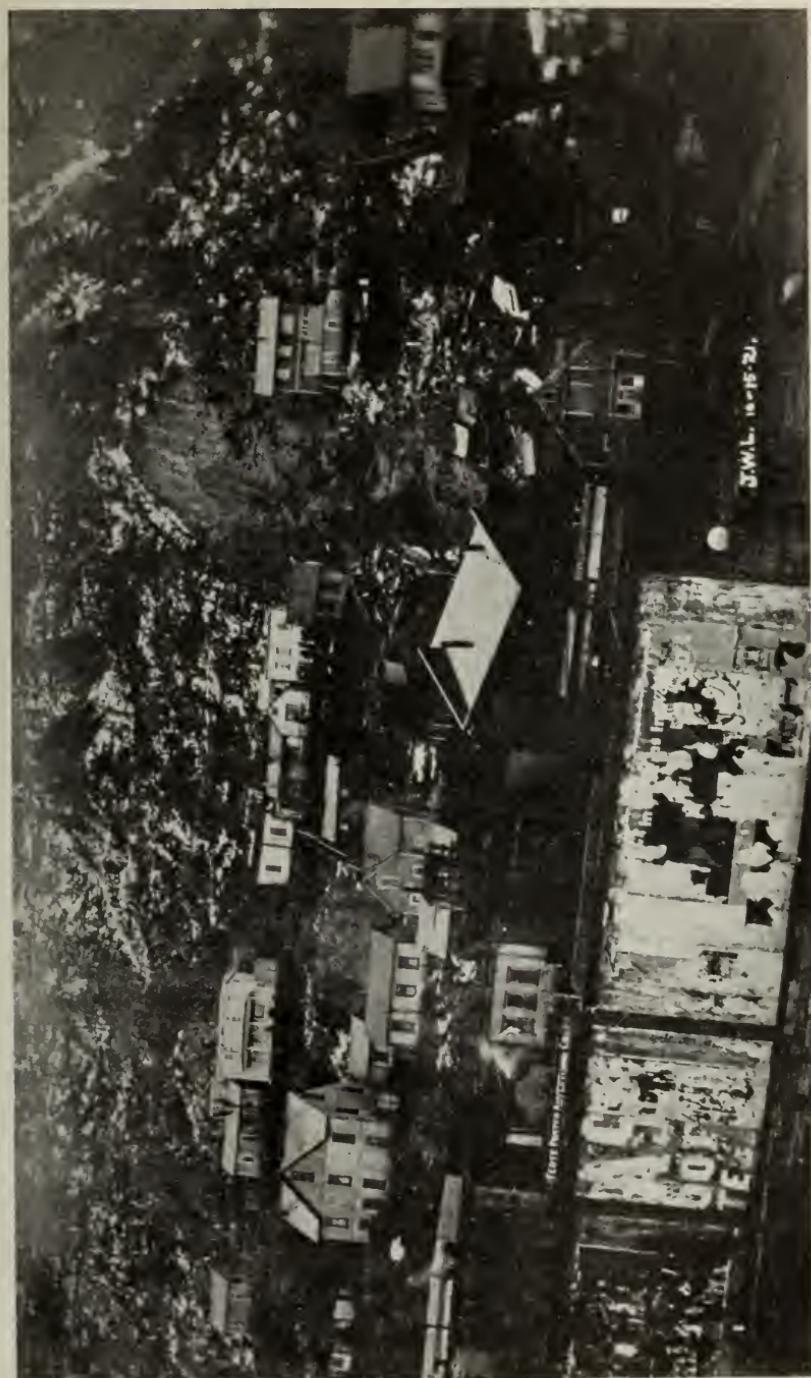
Plaintiff's Exhibit "O."



[Endorsed]: Plf's Exhibit "O." Received in evidence Mar. 24, 1921, In Cause No. 1990—A. J. W. Bell, Clerk. By L. O. Green, Deputy.

[874]

Plaintiff's Exhibit "O-1."



[Endorsed]: Plf's. Exhibit "O-1." Received in evidence Mar. 23, 1921, In Cause No. 1990—A. J. W. Bell, Clerk. By L. O. Green, Deputy. [875]

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**Plaintiff's Exhibit "P."**

UNITED STATES DEPARTMENT OF  
AGRICULTURE.  
WEATHER BUREAU.  
JUNEAU, ALASKA.

March 7, 1921.

I hereby certify that the data below are a true and accurate copy of the official record of the daily amounts of snow on the ground and of precipitation for the dates in question, as recorded by the United States Weather Bureau, Juneau, Alaska.

Average depth of snow on the ground at 8 P. M., December 25, 1919 to January 9, 1920:

25th, a trace, in spots; 26th, a trace; 27th, a trace; 28th 0.3 inch; 29th, 0.3 inch; 30th, 1.7 inch; 31st, 4.3 inch; January 1st, none; 2d, none; 3d none; 4th, 1.1 inches; 5th, 1.8 inches; 6th, none; 7th, none; 8th, none; 9th, none.

Amount of precipitation (rain and melted snow) from January 3 to 8, 1920.

3d, 0.38 inch; 4th, 0.14 inch; 5th, 0.80 inch; 6th, 2.05 inches; 7th, 4.25 inches; 8th, 0.25 inch.

Amount of precipitation from September 21 to 27, 1918: 21st, none; 22d, a trace; 23d, 0.76 inch; 24th, 0.03 inch; 25th, 2.46 inches; 26th, 4.95 inches; 27th, 0.01 inch. The maximum amount that fell in

any 24 consecutive hours during the 25th-26th was 5.54 inches, from 5:34 P. M. of the 25th to 5:34 P. M. of the 26th.

The maximum amount in any 24 hours in January, 1920, was 4.25 inches from midnight to midnight of the 7th.

M. B. SUMMERS,  
Meteorologist, in Charge.

#### ADENDA.

The amount of rainfall in the 24 hours ending at 11 A. M. January 2, 1920 was 0.66 inch, as shown by the records of the automatic rain gage.

M. B. SUMMERS,  
Meteorologist, in Charge.

[Endorsed]: Pltfs. Exhibit No. "S." Received in evidence. Mar. 7, 1921. Cause No. 1947-A. J. W. Bell, Clerk. By \_\_\_\_\_, Deputy.

Plfs. Exhibit No. "P." Received in Evidence April 1, 1921. Cause No. 1990-A. J. W. Bell, Clerk. By L. O. Green, Deputy. [876]

#### Defendant's Exhibit No. 2.

UNITED STATES DEPARTMENT OF AGRICULTURE.

WEATHER BUREAU.

JUNEAU, ALASKA.

March 1, 1921.

I hereby certify that the data attached hereto are a true and accurate copy of the official record of the daily maximum, minimum and mean temperatures, precipitation, and snowfall at Juneau,

Alaska, from October 1, 1919 to January 2, 1920, inclusive, as recorded by the United States Weather Bureau.

M. B. SUMMERS,  
Meteorologist, in Charge.

Defts. Exhibit No. 14. Received in evidence Mar. 5, 1921. Cause No. 1947-A. J. W. Bell, Clerk. By \_\_\_\_\_, Deputy.

Defts. Exhibit No. 1. Received in evidence Mar. 28, 1921. Cause No. 1990-A. J. W. Bell, Clerk. By L. O. Green, Deputy. [877]

Defts. Exhibit No. 2. Received in evidence Apr. 27, 1921. Cause No. 1949-A. J. W. Bell, Clerk. By \_\_\_\_\_, Deputy.

UNITED STATES DEPARTMENT OF AGRICULTURE.  
WEATHER BUREAU.  
JUNEAU, ALASKA.

Weather Conditions at Juneau, Alaska, as Recorded by U. S. Weather Bureau, October, 1919.

Date	Max. Temp.	Min. Temp.	Mean Temp.	Precipitation.	Snow-fall
1	56	34	45	.00	.0
2	51	42	46	1.49	.0
3	54	48	51	1.11	.0
4	52	49	50	.45	.0
5	52	39	46	3.00	.0
6	52	40	46	1.63	.0
7	47	34	40	.52	.1
8	41	32	36	.00	.0
9	38	32	35	.24	.4
10	45	34	40	.12	.0

Date	Max. Temp.	Min. Temp.	Mean Temp.	Precipi- tation.	Snow- fall
11	42	39	40	.03	.0
12	45	39	42	.05	.0
13	45	39	42	.04	.0
14	46	36	41	.00	.0
15	48	34	41	.03	.0
16	46	39	42	.43	.0
17	46	40	43	T	.0
18	47	40	44	.60	T
19	46	42	44	.24	.0
20	42	39	40	.82	.0
21	45	33	39	.10	.0
22	38	30	34	.00	.0
23	35	25	30	.00	.0
24	42	29	36	.00	.0
25	46	31	38	.00	.0
26	40	33	36	.06	.0
27	42	38	40	.36	.0
28	45	31	38	T	.0
29	42	29	36	.21	.0
30	39	33	36	.78	0.3
31	36	33	34	.18	1.3
Mean	44.9	36.0	40.3	—	—
Total	—	—	—	12.49	2.1

Temperature is recorded in degrees Fahrenheit; precipitation and snowfall in inches. Precipitation includes rain and MELTED snow. "T" indicates a trace, or amount too small to measure. Data are for the 24 hours ending at midnight, except snow-

fall, which is for the 24 hours ending at 8 P. M.  
[878]

UNITED STATES DEPARTMENT OF AGRICULTURE.

WEATHER BUREAU.

JUNEAU, ALASKA.

Weather Conditions at Juneau, Alaska, as Recorded by U. S. Weather Bureau, November, 1919.

Date	Max. Temp.	Min. Temp.	Mean Temp.	Precipitation.	Snow-fall
1	37	23	30	.00	.7
2	34	20	27	.00	.0
3	28	21	24	.00	.0
4	26	17	22	.00	.0
5	30	14	22	.00	.0
6	30	19	24	.00	.0
7	28	18	23	.14	.0
8	33	26	30	.73	7.1
9	35	23	29	.00	.0
10	33	20	26	.00	.0
11	30	18	24	.00	.0
12	34	18	26	.75	.3
13	44	33	38	.50	.0
14	44	37	40	.20	.0
15	41	35	38	.62	.4
16	44	39	42	.29	.0
17	50	38	44	1.52	.0
18	47	39	43	1.37	.0
19	40	34	37	.53	.4
20	43	36	40	2.19	.0
21	39	35	37	.28	.2
22	38	31	34	.05	T

Date	Max. Temp.	Min. Temp.	Mean Temp.	Precipi- tation.	Snow- fall
23	35	21	28	.00	.0
24	27	19	23	.00	.0
25	31	19	25	.00	.0
26	28	18	23	.15	.0
27	30	25	28	.35	5.0
28	33	30	32	.24	1.5
29	34	24	29	.02	2.4
30	28	22	25	.00	.0
—	—	—	—	—	—
Mean	35.1	25.7	30.4	—	—
Total	—	—	—	9.93	18.0

Temperature is recorded in degrees Fahrenheit; precipitation and snowfall in inches; precipitation includes rain and MELTED snow. "T" indicates a trace, or amount too small to measure. Data are for the 24-hours ending at midnight, except snowfall, which is for the 24-hours ending at 8 P. M. [879]

## UNITED STATES DEPARTMENT OF AGRICULTURE.

### WEATHER BUREAU.

#### JUNEAU, ALASKA.

Weather Conditions at Juneau, Alaska, as Recorded by U. S. Weather Bureau, December, 1919.

Date	Max. Temp.	Min. Temp.	Mean Temp.	Precipi- tation.	Snow- fall
1	28	17	22	.00	.0
2	27	16	22	.04	.1
3	30	24	27	.12	1.5
4	31	25	28	.01	.8

Date	Max. Temp.	Min. Temp.	Mean Temp.	Precipi- tation.	Snow- fall
5	34	25	30	.07	.1
6	36	26	31	.10	.0
7	29	21	25	.00	.0
8	33	21	27	.00	.0
9	23	17	20	.00	.0
10	23	14	18	.00	.0
11	26	18	22	.00	.0
12	29	22	26	T	.0
13	30	29	30	.19	2.3
14	31	25	28	.51	4.0
15	25	22	24	.30	6.3
16	44	21	32	.48	.7
17	46	39	42	1.12	.0
18	41	29	35	.39	T
19	35	28	32	.10	1.8
20	33	26	30	.00	.0
21	37	21	29	.01	T
22	41	30	36	.30	.5
23	44	36	40	.82	T
24	44	39	42	.31	.0
25	44	35	40	.48	.0
26	45	35	40	.76	T
27	35	31	33	.01	T
28	32	24	28	.01	.3
29	27	19	23	.00	.0
30	30	18	24	.32	1.4
31	40	30	35	1.24	6.9
—	—	—	—	—	—
Mean	34.0	25.3	29.6	—	—
Total	—	—	—	7.69	26.7
—	—	—	—	—	—

Temperature is recorded in degrees Fahrenheit; precipitation and snowfall in inches; precipitation includes rain and MELTED snow. "T" indicates a trace, or amount too small to measure. Data are for the 24 hours ending at midnight, except snowfall, which is for the 24 hours ending at 8 P. M. [880]

UNITED STATES DEPARTMENT OF AGRICULTURE.

WEATHER BUREAU.

JUNEAU, ALASKA.

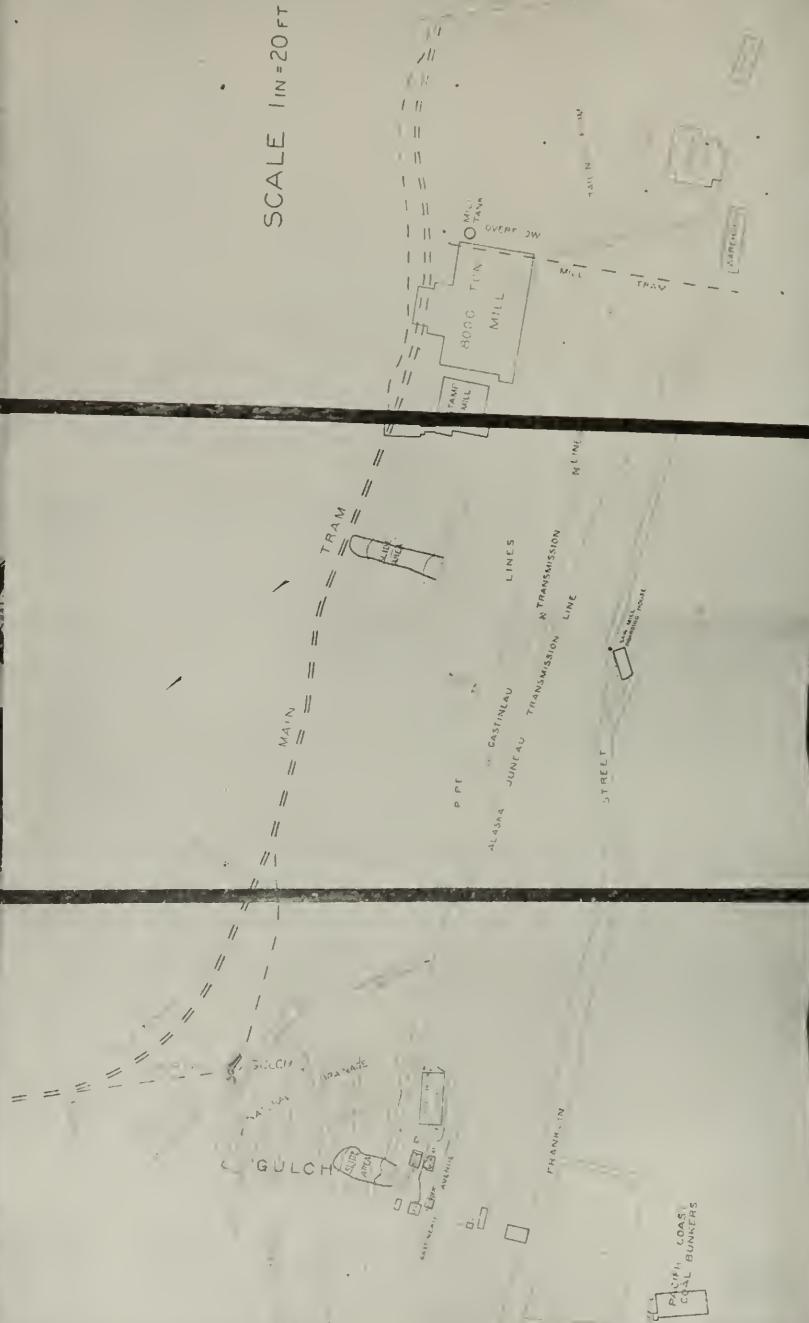
Weather Conditions at Juneau, Alaska, as Recorded by U. S. Weather Bureau, January, 1920.

Date	Max. Temp.	Min. Temp.	Mean Temp.	Precipitation.	Snowfall
1	40	37	38	1.57	.0
2	43	37	40	1.52	.0

Temperature is recorded in degrees Fahrenheit; precipitation and snowfall in inches; precipitation includes rain and melted snow. "T" indicates a trace, or amount too small to measure. Data are for the 24 hours ending at midnight, except snowfall, which is for the 24 hours ending at 8 P. M. [880½]

## Defendant's Exhibit No. 2.

SCALE 1 IN = 20 FT



[Endorsed]: Dft's. Exhibit No. 2. Received in Evidence Mar. 28, 1921, In Cause No. 1990—A. J. W. Bell, Clerk. By L. O. Green, Deputy.  
[881]

**Defendant's Exhibit No. 3.**



[Endorsed]: Dft's. Exhibit No. 3. Received in Evidence Mar. 28, 1921, In Cause No. 1990—A. J. W. Bell, Clerk. By L. O. Green, Deputy.

Defendant's Exhibit No. 4.



[Endorsed]: Dft's. Exhibit No. 4. Received in  
Evidence Mar. 28, 1921, In Cause No. 1990—A.  
J. W. Bell, Clerk. By L. O. Green, Deputy.  
[8831]

1056 *Alaska Juneau Gold Mining Company*

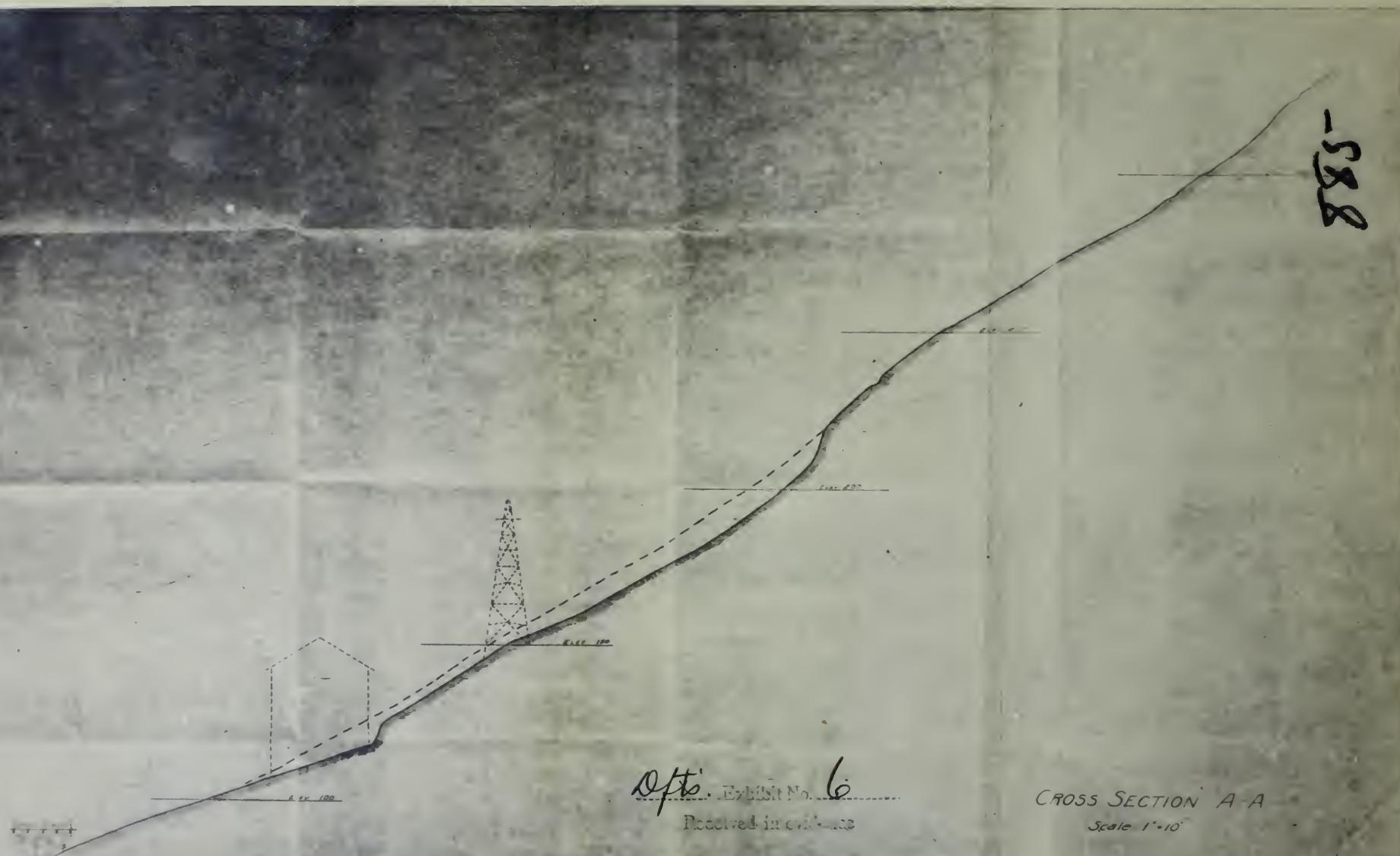
**Defendant's Exhibit No. 5.**



[Endorsed]: Dft's. Exhibit No. 5. Received in Evidence Mar. 28, 1921, In Cause No. 1990—A. J. W. Bell, Clerk. By L. O. Green, Deputy.  
[884]

1057

-885-



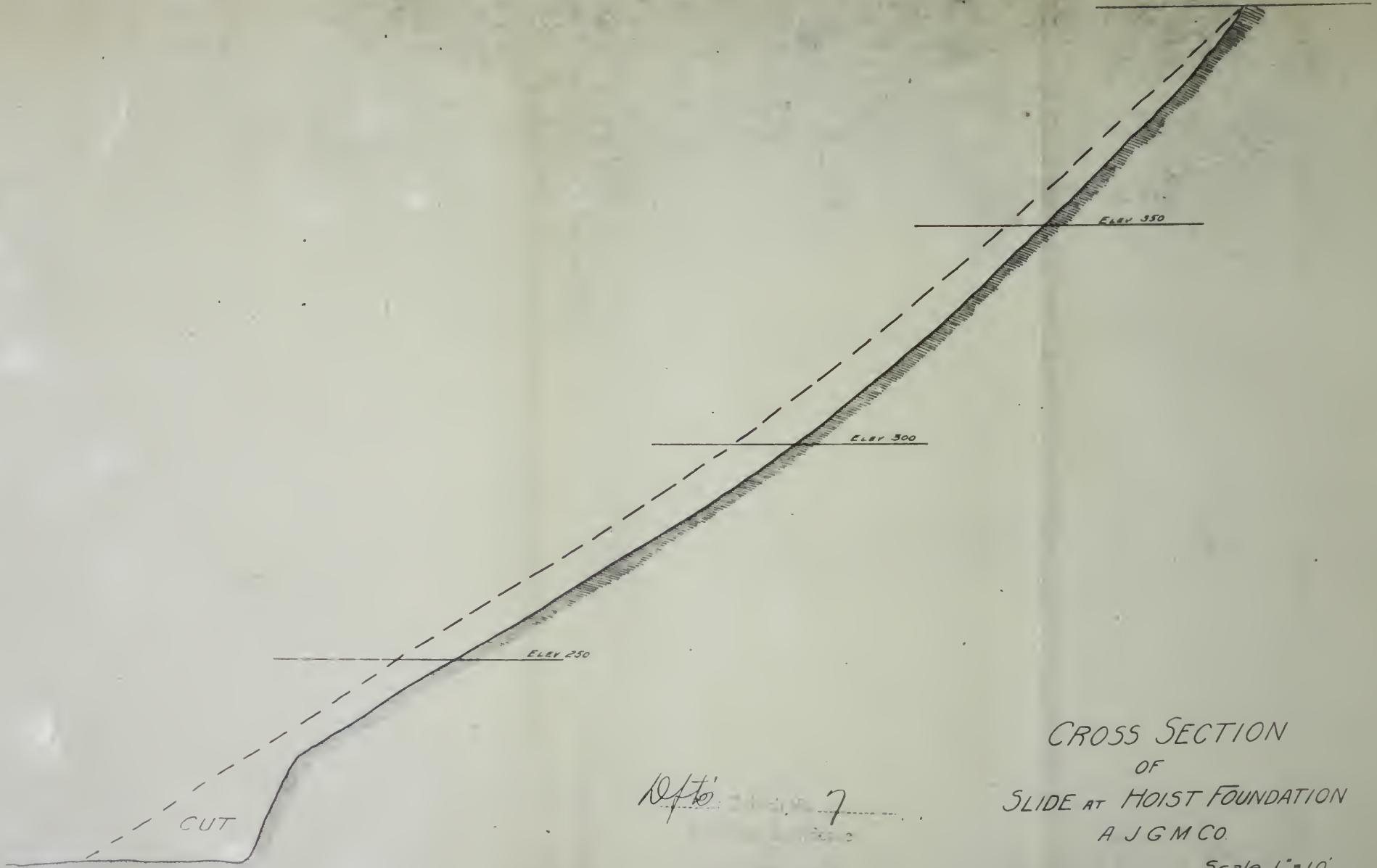
Ott's Exhibit No. 6  
Received in Civil No.

Mar 28 1921

CROSS SECTION A-A  
Scale 1:10

In C. 1990 - a  
J.W. Peeler  
C. E. K.  
M. G. Barnes  
D. M. D.

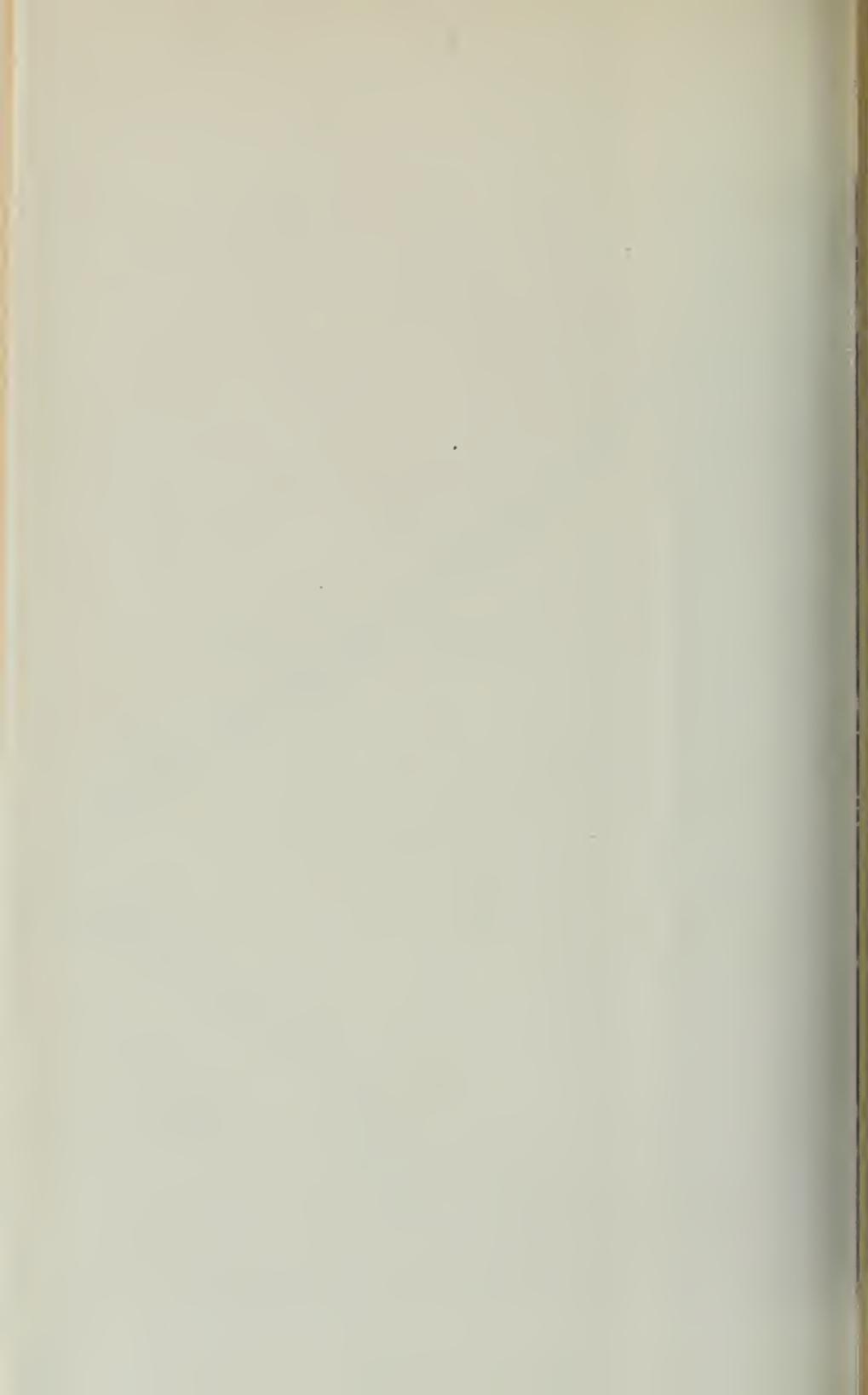




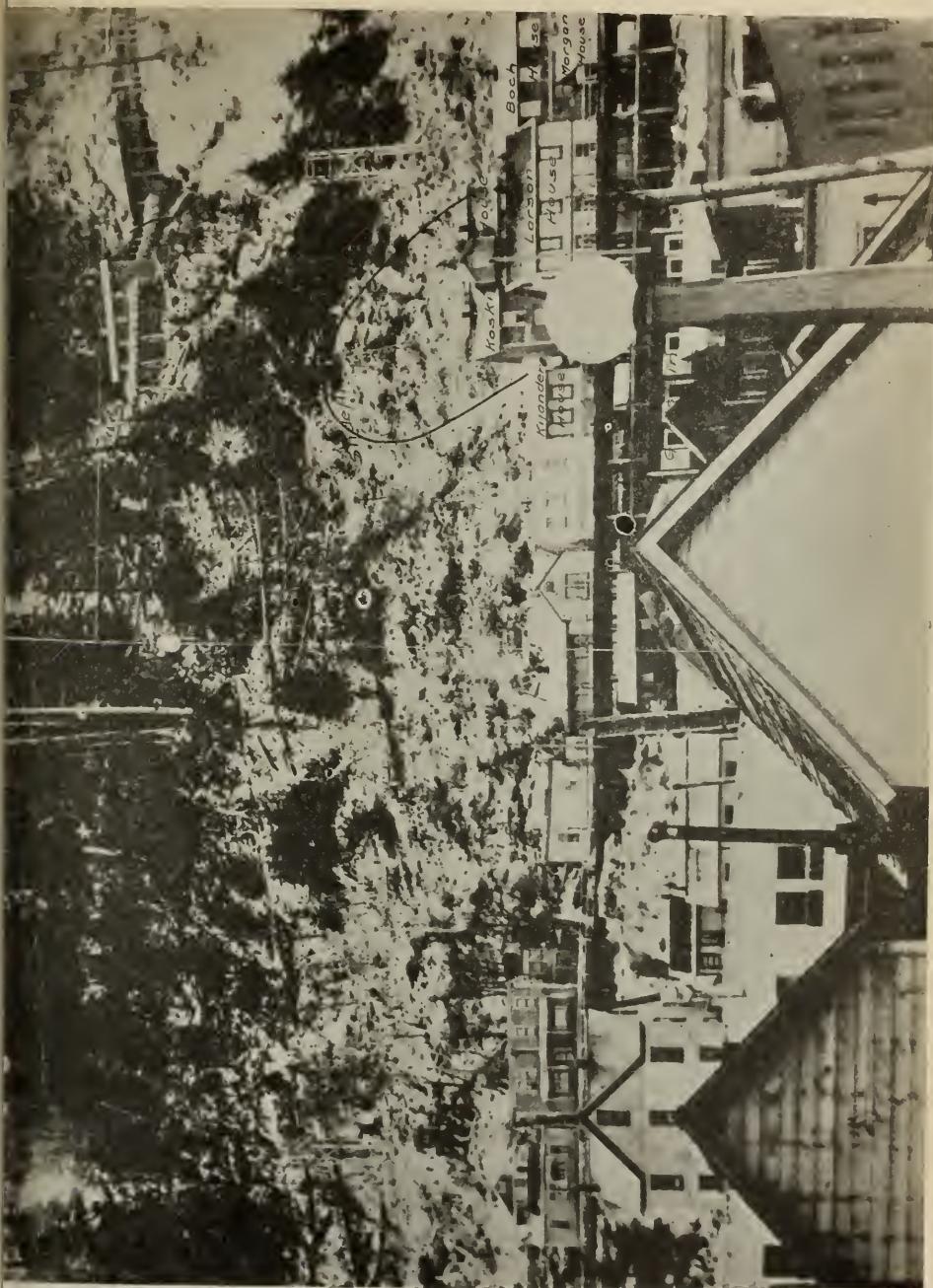
CROSS SECTION  
OF  
SLIDE AT HOIST FOUNDATION  
A JGM CO.

Scale 1"-10'

J.W. Bell 1990-a  
Collier County



Defendant's Exhibit No. 8.



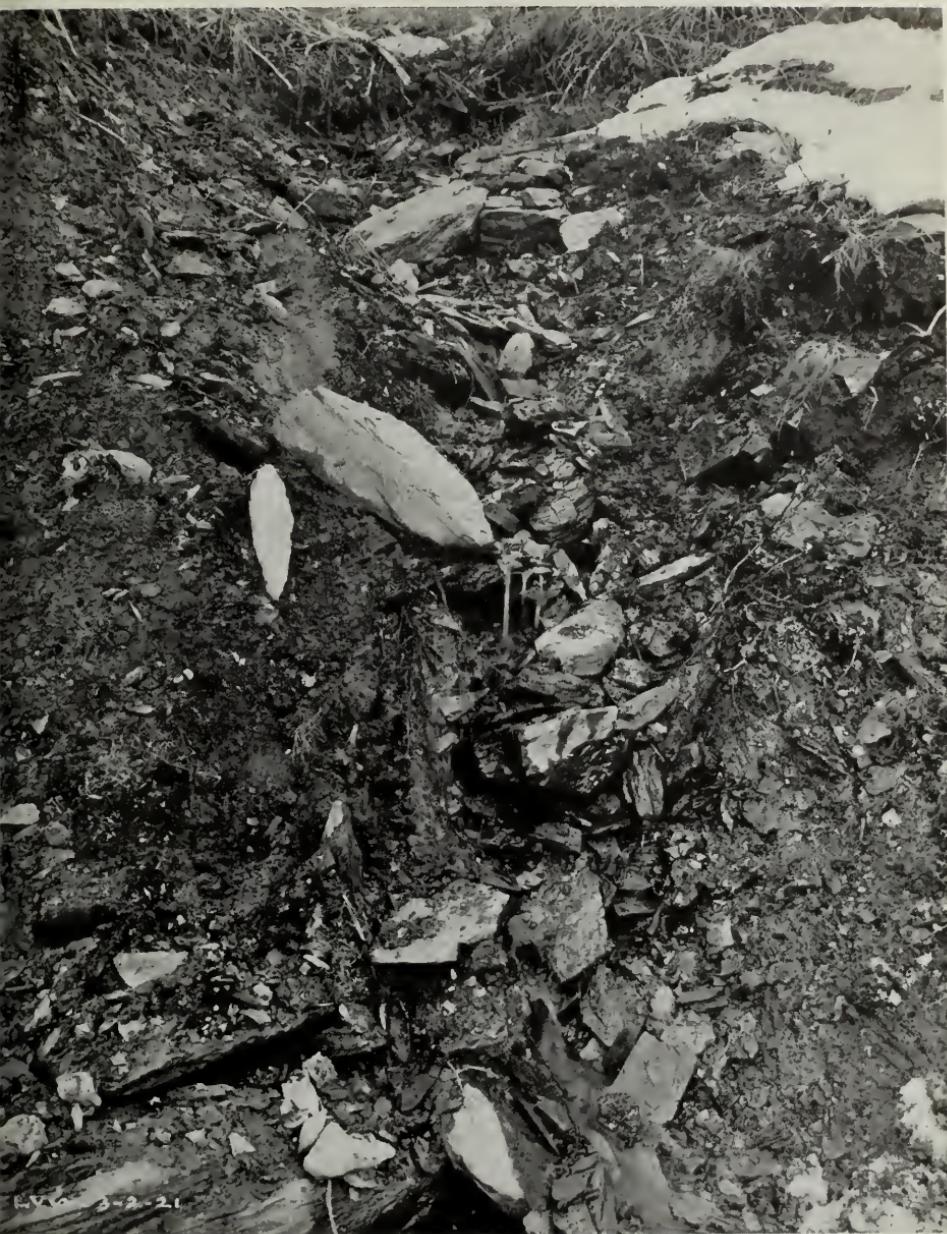
[Endorsed]: Dft's. Exhibit No. 8. Received in  
Evidence Mar. 28, 1921, In Cause No. 1990—A.  
J. W. Bell, Clerk. By L. O. Green, Deputy.  
[887]

Defendant's Exhibit No. 9.



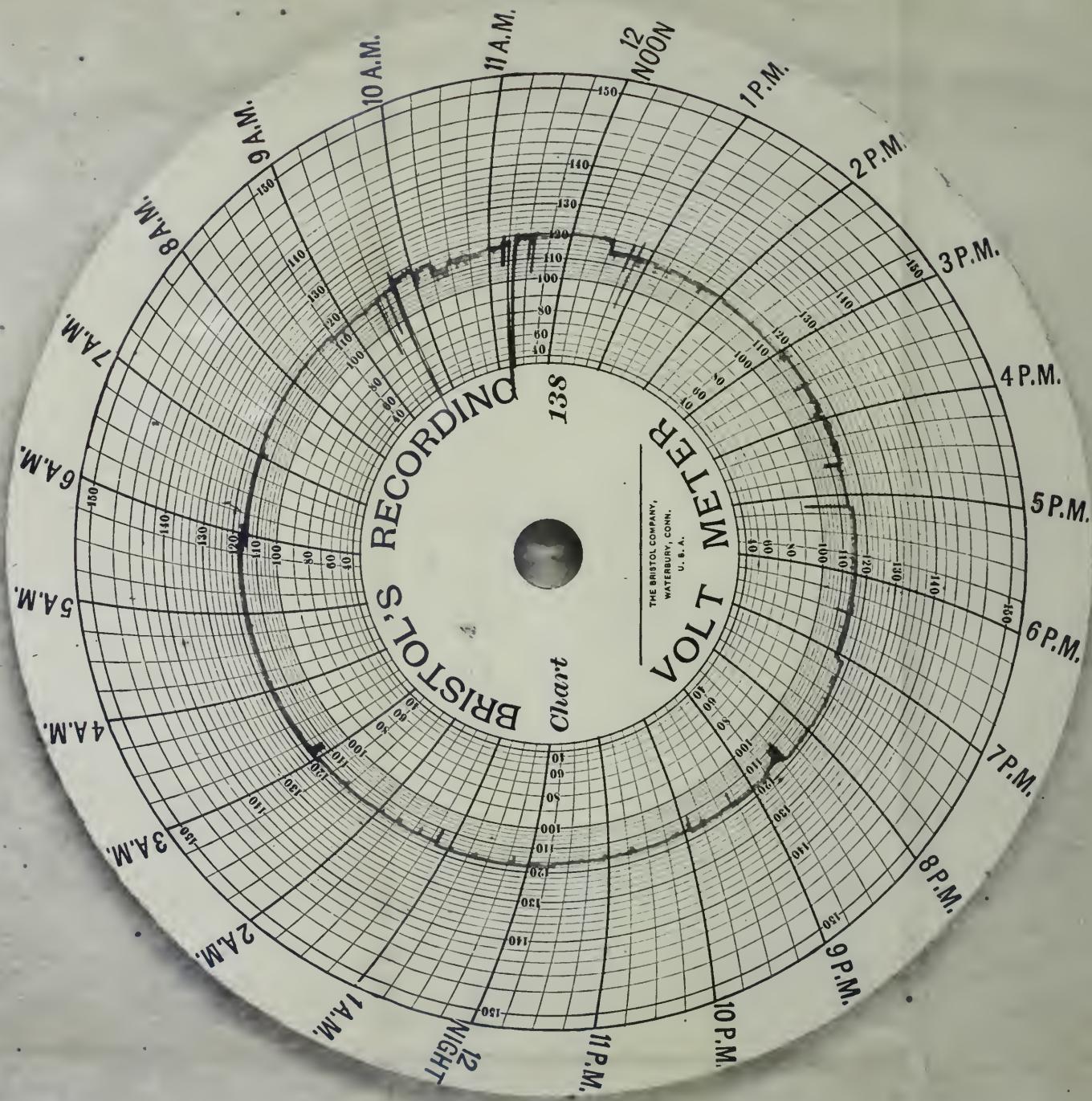
[Endorsed]: Dft's. Exhibit No. 9. Received in evidence Mar. 29, 1921, in Cause No. 1990—A. J. W. Bell, Clerk. By L. O. Green, Deputy.  
[888]

Defendant's Exhibit No. 10.



[Endorsed]: Dft's. Exhibit No. 10. Received in  
evidence April 1, 1921, in Cause No. 1990—A.  
J. W. Bell, Clerk. By L. O. Green, Deputy.  
[889]







**Order Settling Bill of Exceptions.**

This matter coming on to be heard on the motion of the Alaska Juneau Gold Mining Company to settle and allow the bill of exceptions herein, and it appearing to the Court that the above and foregoing cause came on regularly for trial before the Honorable Robert W. Jennings, the then Judge of this court in the manner and at the time in the foregoing bill of exceptions stated that the evidence and proceedings were recorded by the Court stenographer and that the proceedings above enumerated were thereupon duly had and that the above and foregoing bill of exceptions contains all the evidence adduced at the trial by both parties and is a full, complete, accurate and correct record of all the proceedings had and of the whole thereof and that the foregoing bill of exceptions in all respects speaks the truth,—

NOW, THEREFORE, I, the undersigned, Judge of the United States District Court for the Territory of Alaska, Division Number One, successor to Hon. Robert W. Jennings, do hereby certify that the foregoing bill of exceptions was duly and regularly presented within the time allowed therefor; that it contains all the evidence adduced at the trial and is a full, complete, accurate and correct record of all the proceedings had in connection with said cause and of the whole thereof and that the same in all respects speaks the truth.

AND IT IS HEREBY ORDERED that the foregoing bill of exceptions be and the same is hereby

settled and allowed and made a part of the record in this cause.

Done in open court this 31st day of October, 1921.

T. M. REED,

Judge of the Above-entitled Court.

Filed in the District Court, District of Alaska, First Division. Oct. 31, 1921. John H. Dunn, Clerk. By J. E. Spray, Deputy. [891]

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In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.

Case No. 1990-A.

ISADORE GOLDSTEIN,

Plaintiff,

vs.

ALASKA JUNEAU GOLD MINING COMPANY,  
a Corporation,

Defendant.

In the United States Circuit Court of Appeals for  
the Ninth Circuit, Holden at San Francisco.

Case No. 1990-A.

ALASKA JUNEAU GOLD MINING COMPANY,  
a Corporation,

Plaintiff in Error,

vs.

ISADORE GOLDSTEIN,

Defendant in Error.

**Petition for Writ of Error.**

To the Honorable THOMAS M. REED, Judge of the District Court for the Territory of Alaska, Division Number One:

COMES NOW the above-named Alaska Juneau Gold Mining Company, a corporation, the plaintiff in error herein, by its attorneys, Hellenthal & Hellenthal, and complains that in the record and proceedings had in the District Court for the Territory of Alaska, Division Number One, in Case No. 1990-A Isadore Goldstein, plaintiff and defendant in error, against the Alaska Juneau Gold Mining Company, defendant, and plaintiff in error, and also the rendition of the judgment in said cause in the District Court for the Territory of Alaska, Division Number One, against Alaska Juneau Gold Mining Company on the 6th day of September, 1921, wherein the District Court for the Territory of Alaska adjudged the defendant, the Alaska Juneau Gold Mining Company to be indebted to the plaintiff Isadore Goldstein in the sum of \$13,775.00, and therein the plaintiff Isadore Goldstein was given judgment against the defendant [892] the Alaska Juneau Gold Mining Company for the sum of \$13,775.00, and costs taxed at \$144.80 manifest error hath happened to the great damage of said Alaska Juneau Gold Mining Company as will more fully appear from the assignment of errors filed herewith.

WHEREFORE the Alaska Juneau Gold Mining Company prays for the allowance of a writ of error, and for an order fixing the amount of the cost

and supersedeas bond in said cause, and for such other orders and processes as may cause the said errors to be corrected by the United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 2d day of November, 1921.

HELLENTHAL & HELLENTHAL,  
Attorneys for the Alaska Juneau Gold Mining  
Company.

Copy received October 2, 1921.

RODEN & DAWES,  
Attorneys for Isadore Goldstein.

Filed in the District Court, District of Alaska,  
First Division. Nov. 2, 1921. John H. Dunn,  
Clerk. By L. E. Spray, Deputy. [893]

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In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.

Case No. 1990-A.

ISADORE GOLDSTEIN,

Plaintiff,

vs.

ALASKA JUNEAU GOLD MINING COMPANY,  
a Corporation,

Defendant.

**Order Allowing Writ of Error and Fixing Amount  
of Supersedeas and Cost Bond.**

This matter coming on to be heard on the petition of the Alaska Juneau Gold Mining Company for a writ of error, the assignment of errors having been

regularly filed with said petition, and the writ of error is hereby allowed as prayed for in said petition and the amount of the supersedeas and cost bond is fixed at Sixteen Thousand Dollars (\$16,000), to be approved by the Court or the clerk thereof.

Dated this 2d day of Nov. 1921.

THOS. M. REED,  
Judge.

Copy received Nov. 2d, 1921.

RODEN & DAWES,  
Attorneys for Plaintiff.

Filed in the District Court, District of Alaska, First Division. Nov. 2, 1921. John H. Dunn, Clerk. By L. E. Spray, Deputy.

Entered Court Journal No. Q, page 390. [894]

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In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.

Case No. 1990-A.

ISADORE GOLDSTEIN,

Plaintiff,

vs.

ALASKA JUNEAU GOLD MINING COMPANY,  
a Corporation,

Defendant.

United States Circuit Court of Appeals for the  
Ninth Circuit, Holden at San Francisco.

ALASKA JUNEAU GOLD MINING COMPANY,  
a Corporation,

Plaintiff in Error,

vs.

ISADORE GOLDSTEIN,

Defendant in Error.

**Bond on Writ of Error.**

KNOW ALL MEN BY THESE PRESENTS: That we, the Alaska Juneau Gold Mining Company, a corporation, as principal, and John Reck, as surety, are held and firmly bound unto the above-named Isadore Goldstein in the just and full sum of sixteen thousand dollars, to be paid to the said Isadore Goldstein, his attorneys or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 2d day of Nov., 1921.

WHEREAS, lately in the District Court for the Territory of Alaska, Division Number One, in an action therein pending between Isadore Goldstein, as plaintiff, and the Alaska Juneau Gold Mining Company, as defendant, a judgment was rendered against the said Alaska Juneau Gold Mining Company for the sum of \$13,775.00 and costs, and the said Alaska Juneau Gold Mining Company having obtained a writ of error, and filed a copy thereof in

the clerk's office of the said Court to reverse the judgment in the aforesaid action and the citation directed to the said Isadore Goldstein, citing and admonishing him to be and appear at the session of the United States [895] Circuit Court of Appeals for the Ninth Circuit to be holden at the city of San Francisco, State of California, within thirty days from the date of approval of this bond.

NOW, the condition of the above obligation is such that if the said Alaska Juneau Gold Mining Company shall prosecute said writ of error to effect and answer all damages and costs if it fail to make its said plea good, then and in that event the above obligation to be void; otherwise to remain in full force and virtue.

ALASKA JUNEAU GOLD MINING COMPANY,

By P. R. BRADLEY,  
Its Attorney Principal.  
JOHN RECK,  
Surety.

Signed, sealed and delivered in the presence of:

A. G. SHOUP,  
J. W. KEHOE.

O. K.—HENRY RODEN,  
For Plaintiff.

Approved Nov. 2, 1921.

THOS. M. REED,  
District Judge.

Filed in the District Court, District of Alaska,  
First Division. Nov. 2, 1921. John H. Dunn,  
Clerk. By L. E. Spray, Deputy. [896]

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In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.

Case No. 1990-A.

ISADORE GOLDSTEIN,

Plaintiff,

vs.

ALASKA JUNEAU GOLD MINING COMPANY,  
a Corporation,

Defendant.

United States Circuit Court of Appeals for the  
Ninth Circuit, Holden at San Francisco.

ALASKA JUNEAU GOLD MINING COMPANY,  
a Corporation,

Plaintiff in Error,

vs.

ISADORE GOLDSTEIN,

Defendant in Error.

**Writ of Error.**

United States of America,—ss.

The President of the United States of America to  
the Honorable THOMAS M. REED, Judge of  
the District Court for the Territory of Alaska,  
Division Number One, GREETING:

Because of the record and proceedings, as also

in the rendition of the judgment of a plea, which is in said District Court, Division Number One thereof, before you, between Isadore Goldstein, as plaintiff, and the Alaska Juneau Gold Mining Company, a corporation, as defendant, a manifest error hath happened to the great prejudice and damage of the said Alaska Juneau Gold Mining Company as set forth and appears by the petition herein.

We, being willing that error, if any hath happened, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment [897] be therein given, that then under your seal distinctly and openly you send the records and proceedings aforesaid with all things concerning the same to the Justice of the United States Circuit Court of Appeals for the Ninth Circuit, in the city of San Francisco, in the State of California, together with this writ, so as to have the same at said place and said Circuit on or before thirty days from the date hereof that the record and proceedings aforesaid being inspected the said Circuit Court of Appeals may cause further to be done therein to correct those errors what of right, and according to the laws and customs of the United States, should be done.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the Supreme Court of the United States, this 2d day of Nov., A. D. 1921.

Attest my hand and seal of the District Court for the Territory of Alaska, Division Number One, at

the Clerk's office at Juneau on the day and year last above written.

[Seal]

JOHN H. DUNN,

Clerk of the District Court for the Territory of Alaska, Division Number One.

By L. E. SPRAY,

Deputy Clerk.

Allowed this 2d day of Nov., A. D. 1921.

THOS. M. REED,

Judge.

Copy received Nov. 1921.

RODEN & DAWES,

For Plaintiff.

Filed in the District Court, District of Alaska, First Division. Nov. 2, 1921. John H. Dunn, Clerk. By L. E. Spray, Deputy. [898]

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In the District Court for the Territory of Alaska, Division Number One, at Juneau.

Case No. 1990-A.

ISADORE GOLDSTEIN,

Plaintiff,

vs.

ALASKA JUNEAU GOLD MINING COMPANY,  
a Corporation,

Defendant.

United States Circuit Court of Appeals for the  
Ninth Circuit, Holden at San Francisco.

ALASKA JUNEAU GOLD MINING COMPANY,  
a Corporation,

Plaintiff in Error,

vs.

ISADORE GOLDSTEIN,

Defendant in Error.

**Citation on Writ of Error.**

The President of the United States to ISADORE  
GOLDSTEIN, the Above-named Plaintiff,  
GREETING:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, State of California, within thirty (30) days from the date of this citation, pursuant to a writ of error filed in the clerk's office of the District Court for the Territory of Alaska, Division Number One, wherein the Alaska Juneau Gold Mining Company, a corporation is the plaintiff in error and you, the said Isadore Goldstein, are the defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should be done to the parties in that behalf.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the Supreme Court of the United States of America, [899] this 2d day

1076 *Alaska Juneau Gold Mining Company*

of Nov., 1921, and of the Independence of the United States the 145th.

THOS. M. REED,

Judge.

Copy received Nov. 2, 1921.

RODEN & DAWES,  
Attorneys for Plaintiff. [900]

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In the District Court for the District of Alaska,  
Division Number One, at Juneau.

Case No. 1990-A.

ISADORE GOLDSTEIN,

Plaintiff,

vs.

ALASKA JUNEAU GOLD MINING COMPANY,  
a Corporation,

Defendant.

**Order Extending Time Forty Days to Forward and  
File Record on Appeal (Dated November 22,  
1921).**

On motion of Hellenthal & Hellenthal, attorneys for the defendant above named, made in open court, and it appearing to the Court that the transcript on appeal in this case cannot be made out in time to reach the Circuit Court of Appeals for the Ninth Circuit at San Francisco within the time granted in the citation and the extension granted,—

IT IS ORDERED that forty days' additional time from the date hereof is hereby granted in order

to forward and file the record on appeal to the Circuit Court of Appeals for the Ninth Circuit.

Done in open court this 22d day of November, 1921.

THOS. M. REED,  
Judge.

O. K.—HENRY RODEN.

Filed in the District Court, District of Alaska, First Division. Nov. 22, 1921. John H. Dunn, Clerk. By W. B. King, Deputy.

Entered Court Journal No. Q, page 419. [901]

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In the District Court for the District of Alaska,  
Division Number One, at Juneau.

Case No. 1990-A.

ISADORE GOLDSTEIN,

Plaintiff,

vs.

ALASKA JUNEAU GOLD MINING COMPANY,  
a Corporation,

Defendant.

**Order Extending Time to and Including January  
10, 1922, to Complete Record on Appeal.**

On motion of Hellenthal & Hellenthal, attorneys for the defendant above named, made in open court, and it appearing to the Court that the transcript on appeal in this case cannot be made out in time to reach the Circuit Court of Appeals for the Ninth

Circuit at San Francisco within the time granted in the citation and the extension granted,—

IT IS ORDERED that an extension of time to and including January tenth, 1922, is hereby granted in order to forward the record on appeal to the Circuit Court of Appeals for the Ninth Circuit.

Done in open court this 16th day of December, 1921.

THOS. M. REED,  
Judge.

Filed in the District Court, District of Alaska, First Division. Dec. 16, 1921. John H. Dunn, Clerk. By L. E. Spray, Deputy.

O. K.—RODEN. [901-A]

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In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.

Case No. 1990-A.

ISADORE GOLDSTEIN,

Plaintiff,

vs.

ALASKA JUNEAU GOLD MINING COMPANY,  
a Corporation,

Defendant.

United States Circuit Court of Appeals for the  
Ninth Circuit, Holden at San Francisco.

Case No. 1990-A.

ALASKA JUNEAU GOLD MINING COMPANY,  
a Corporation,

Plaintiff in Error,

vs.

ISADORE GOLDSTEIN,

Defendant in Error.

**Assignment of Errors.**

Comes now the Alaska Juneau Gold Mining Company, and with its petition for writ of error herein, files and presents this, its assignment of errors, the errors so assigned being the errors upon which the said Alaska Juneau Gold Mining Company will rely for a reversal of the judgment herein.

**ASSIGNMENT OF ERROR No. ONE.**

That the evidence is insufficient to justify the verdict.

**ASSIGNMENT OF ERROR No. TWO.**

That the Court erred in denying defendant's motion for a directed verdict made at the close of the case, after the evidence on behalf of both parties had been adduced, submitted and closed, for the reasons stated in said motion, which is incorporated in the bill of exceptions and to which reference is hereby made. [902]

**ASSIGNMENT OF ERROR No. THREE.**

That the Court erred in instructing the jury as follows:

"If your verdict should be for the plaintiff, it should be for such sum as you may find from the evidence he has been damaged, as the direct, natural and probable consequences of the slide. You cannot allow anything by way of punitive damages or smart money."

to which portion of the Court's charge the defendant excepted on the ground that there was no evidence under which the jury could assess damages, there being no evidence of market value, nor evidence of the extent of the loss or damage if any, sufficient for the jury to assess damages.

**ASSIGNMENT OF ERROR No. FOUR.**

That the Court erred in refusing to instruct the jury to bring in a verdict for the defendant.

**ASSIGNMENT OF ERROR No. FIVE.**

That the Court erred in overruling the motion for a new trial.

**ASSIGNMENT OF ERROR No. SIX.**

That the Court erred in entering a judgment.

Because of the several errors above enumerated the Alaska Juneau Gold Mining Company prays that the judgment herein be set aside and reversed.

**HELLENTHAL & HELLENTHAL,**  
Attorneys for the Alaska Juneau Gold Mining  
Company.

Copy received Nov. 2d, 1921.

RODEN & DAWES,  
Attorneys for Isadore Goldstein.

Filed in the District Court, District of Alaska,  
First Division. Nov. 2, 1921. John H. Dunn,  
Clerk. By L. E. Spray, Deputy. [903]

In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.

Case No. 1990-A.

ISADORE GOLDSTEIN,

Plaintiff,

vs.

ALASKA JUNEAU GOLD MINING COMPANY,  
a Corporation,

Defendant.

**Praecipe for Transcript of Record.**

Kindly prepare certified copies for transmission to the Circuit Court of Appeals in connection with your return on the Writ of Error herein, as follows: Complaint and bill of particulars, answer, reply, bill of exceptions, petition for writ of error, order allowing writ of error and fixing amount of supersedeas bond, supersedeas bond and order approving same, writ of error, citation, orders extending time and assignments of error.

HELLENTHAL & HELLENTHAL,  
Attorneys for Defendant.

Filed in the District Court, District of Alaska,  
First Division. Nov. 8, 1921. John W. Dunn,  
Clerk. By L. E. Spray, Deputy. [904]

In the District Court for the District of Alaska,  
Division No. 1, at Juneau.

**Certificate of Clerk U. S. District Court to Tran-  
script of Record.**

United States of America,  
District of Alaska,  
Division No. 1,—ss.

I, John H. Dunn, Clerk of the District Court for the District of Alaska, Division No. 1, hereby certify that the foregoing and hereto attached 905 pages of typewritten matter, numbered from one to 904, both inclusive, constitute a full, true, and complete copy, and the whole thereof, of the record prepared in accordance with the praecipe of attorneys for plaintiff in error on file in my office and made a part hereof, in Cause No. 1990-A, wherein Alaska Juneau Gold Mining Company, a corporation, is defendant and plaintiff in error and Isadore Goldstein is plaintiff and defendant in error.

I further certify, that the said record is by virtue of a writ of error and citation issued in this cause and the return thereof in accordance therewith.

I further certify that this transcript was prepared by me in my office, and that the cost of preparation, examination and certificate amounting to the sum of four hundred seven and 45/100 dollars (407.45) has been paid to me by counsel for plaintiff in error.

In witness whereof I have hereunto set my hand  
and the seal of the above-entitled court this 16th  
day of December, 1921.

[Seal]

JOHN H. DUNN,  
Clerk.By \_\_\_\_\_,  
Deputy. [905]  
\_\_\_\_\_

[Endorsed]: No. 3813. United States Circuit Court of Appeals for the Ninth Circuit. Alaska Juneau Gold Mining Company, a Corporation, Plaintiff in Error, vs. Isadore Goldstein, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Alaska, Division No. 1.

Filed December 27, 1921.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.By Paul P. O'Brien,  
Deputy Clerk.

